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TO APPROVE THE COMPACT OF FREE ASSOCIATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S.J. Res. 286

A RESOLUTION TO APPROVE THE COMPACT OF FREE ASSOCIATION, AND FOR OTHER PURPOSES

MAY 24, 1984

Printed for the use of the
Committee on Energy and Natural Resources

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TO APPROVE THE COMPACT OF FREE ASSOCIATION

THURSDAY, MAY 24, 1984

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-366, Dirksen Office Building, Hon. James A. McClure, chairman, presiding.

Present: Senators McClure, Warner, Murkowski, Hecht, Johnston, and Matsunaga.

Also present: James P. Beirne, counsel; and D. Michael Harvey, chief counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The **CHAIRMAN**. The hearing will come to order.

This hearing has been scheduled to receive testimony concerning Senate Joint Resolution 286, legislation submitted by the President to approve the compact of free association with the Republic of the Marshall Islands and with the Federated States of Micronesia.

These compacts have been approved by the two governments in United Nations' observed plebiscites. If approved by the Congress, they will form part of the basis for termination of the United Nation's trusteeship, permitting these two governments to enjoy full self-government for the first time in 400 years.

The Compacts also will govern relations between each of these countries and the United States in the post-trusteeship period. The compacts acknowledge that each of the two governments are self-governing and competent to conduct their own foreign affairs.

The compacts also make available to these governments various levels of financial and program assistance to enable them to develop their economies and provide for the health and education of their residents. The compacts also guarantee the security of the area so that these countries may develop in peace.

While I'm pleased that the President has submitted the compact to the Congress, I am not satisfied that the administration would propose funding for the first year of the compact and not also include funding sufficient to wind down the trusteeship. There are a variety of issues, including the prior year deficits and completion of the capital infrastructure program, which must be addressed.

I am very concerned over the attitude of the administration not only with respect to past commitments and undertakings, but also with respect to the commitments and promises both explicit and implicit in this compact.

The compact proposes a close and continuing relationship between these countries and the United States. The United States agrees to undertake certain responsibilities to assist these countries. There is no reason why those commitments cannot be implemented in a way which fully recognizes the sovereignty of these countries, respects their right to self-government and control over their internal and external affairs, and at the same time makes available the resources and assistance which they will need in order to develop.

I want to make it as clear as necessary that the United States will fulfill its obligations, both those of the past and the promises for the future.

This committee has repeatedly offered to work with the administration to develop a format to do this, and I simply want to caution the administration that it will be done with or without your approval. The undertakings in this compact will not be allowed to become empty promises as a result of budget and organizational maneuvering by the Office of Management and Budget or other agencies.

Over the period of the trusteeship, we have developed close and I hope enduring friendships with the peoples of the trust territory. There have been mistakes and times of frustration, but I believe that the overall record is one of achievement. The budget submissions from each of the areas have demonstrated the progress which these areas have made. I am pleased that the Assistant Secretary of the Interior in his recent appearance before the Appropriations Committee repeated his commitment to additional technical assistance and aid to economic development. I hope that commitment will continue and will be reflected in the administration's approach to implementation of the compact. It will reflect mine.

We have a large number of witnesses today, and I would like to request that all witnesses submit their formal statements for the record and summarize their positions. That will enable the members of the committee to ask questions.

A copy of the transmittal letter from the President and the joint resolution will appear at this point in the record and the text of the subsidizing agreements will appear in the appendix together with the administration's responses to questions submitted by the committee during our June 1980 oversight hearing on the compact.

[The material follows:]

TO THE CONGRESS OF THE UNITED STATES:

There is enclosed a draft of a Joint Resolution to approve the "Compact of Free Association," the negotiated instrument setting forth the future political relationship between the United States and two political jurisdictions of the Trust Territory of the Pacific Islands.

The Compact of Free Association is the result of more than fourteen years of continuous and comprehensive negotiations, spanning the administrations of four Presidents. The transmission of the proposed Joint Resolution to you today marks the last step in the Compact approval process.

The full text of the Compact is part of the draft Joint Resolution, which I request be introduced, referred to the appropriate committees for consideration, and enacted. I also request that the Congress note the agreements subsidiary to the Compact. Also enclosed is a section-by-section analysis to facilitate your consideration of the Compact.

The defense and land use provisions of the Compact extend indefinitely the right of the United States to foreclose access to the area to third countries for military purposes. These provisions are of great importance to our strategic position in the Pacific and enable us to continue preserving regional security and peace.

Since 1947, the islands of Micronesia have been administered by the United States under a Trusteeship Agreement with the United Nations Security Council. This Compact of Free Association with the governments of the Federated States of Micronesia and the Republic of the Marshall Islands would fulfill our commitment under that agreement to bring about self-government. Upon termination of the Trusteeship Agreement, another political jurisdiction of the Trust Territory of the Pacific Islands, the Northern Mariana Islands, will become a commonwealth of the United States.

The Compact of Free Association was signed for the United States by Ambassador Fred M. Zeder, II, on October 1, 1982, with the Federated States of Micronesia, and on June 25, 1983, with the Republic of the Marshall Islands. It is the result of negotiations between the United States and broadly representative groups of delegates from the prospective freely associated states.

In 1983, United Nations-observed plebiscites produced high voter participation, and the Compact was approved by impressive majorities. In addition to approval in the plebiscites, the Compact has been approved by the governments of the Republic of the Marshall Islands and the Federated States of Micronesia in accordance with their constitutional processes.

Enactment of the draft Joint Resolution approving the Compact of Free Association would be a major step leading to the termination of the Trusteeship Agreement with the United Nations Security Council, which the United States entered into by Joint Resolution on July 18, 1947. Therefore, I urge the Congress to approve the Compact of Free Association.

Ronald Reagan

THE WHITE HOUSE,
March 30, 1984.

98TH CONGRESS
2D SESSION

S. J. RES. 286

To approve the Compact of Free Association, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 1 (legislative day, APRIL 30), 1984

Mr. McCLURE (by request) introduced the following joint resolution; which was read twice and referred to the Committee on Energy and Natural Resources

---

JOINT RESOLUTION

To approve the Compact of Free Association, and for other purposes.

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the Trusteeship Agreement for the former Japanese Mandated Islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

Whereas the United States, in accordance with the Trusteeship Agreement, the charter of the United Nations and the objectives of the international trusteeship system, has promoted the development of the peoples of the trust territory toward self-government or independence as appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the peoples of the Federated States of Micronesia and the Marshall Islands expressed through their freely elected representatives and by the official pronouncements and enactments of their lawfully constituted governments, and in consideration of its own obligations under the Trusteeship Agreement to promote self-determination, entered into political status negotiations with representatives of the peoples of the Federated States of Micronesia, and the Marshall Islands; and

Whereas these negotiations resulted in the Compact of Free Association which, together with its related agreements, was signed by the United States and by the Federated States of Micronesia and the Republic of the Marshall Islands on October 1, 1982, and June 25, 1983, respectively; and

Whereas the Compact of Free Association was approved by majorities of the peoples of the Federated States of Micronesia and the Marshall Islands in United Nations-observed plebiscites conducted on June 21, 1983, and September 7, 1983, respectively; and

Whereas the Compact of Free Association has been approved by the Governments of the Federated States of Micronesia and the Marshall Islands in accordance with their respective constitutional processes, thus completing fully for the Federated States of Micronesia and the Marshall Islands their domestic approval processes with respect to the compact as contemplated in the compact; section 411: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Compact of Free Association, the text of which follows, is hereby approved and the President is authorized to agree to an effective date for and thereafter to implement the Compact of Free Association, having taken into account any procedures with respect to the United Nations for termination of the Trusteeship Agreement.

COMPACT OF FREE ASSOCIATION

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENTS OF THE MARSHALL ISLANDS
AND THE FEDERATED STATES OF MICRONESIA

Affirming that their Governments and their relationships as Governments are founded upon respect for human rights and fundamental freedoms for all, and that the peoples of the Trust Territory of the Pacific Islands have the right to enjoy self-government; and

Affirming the common interests of the United States of America and the peoples of the Trust Territory of the Pacific Islands in creating close and mutually beneficial relationships through two free and voluntary associations of their respective Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and self-sufficiency of the peoples of the Trust Territory of the Pacific Islands; and

Recognizing that their previous relationship has been based upon the International Trusteeship System of the United Nations Charter, and in particular Article 76 of the Charter; and that pursuant to Article 76 of the Charter, the peoples of the Trust Territory have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they have, through their freely-expressed wishes, adopted Constitutions appropriate to their particular circumstances; and

Recognizing their common desire to terminate the Trusteeship and establish two new government-to-government relationships each of which is in accordance with a new political status based on the freely-expressed wishes of peoples of the Trust Territory of the Pacific Islands and appropriate to their particular circumstances; and

Recognizing that the peoples of the Trust Territory of the Pacific Islands have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitutions and forms of government and that the approval of the entry of their respective Governments into this Compact of Free Association by the peoples of the Trust Territory of the Pacific Islands constitutes an exercise of their sovereign right to self-determination;

NOW, THEREFORE, AGREE to enter into relationships of free association which provide a full measure of self-government for the peoples of the Marshall Islands and the Federated States of Micronesia; and

FURTHER AGREE that the relationships of free association derive from and are as set forth in this Compact; and that, during such relationships of free association, the respective rights and responsibilities of the Government of the United States and the Governments of the freely associated states of the Marshall Islands and the Federated States of Micronesia in regard to these relationships of free association derive from and are as set forth in this Compact.

TITLE ONE

ARTICLE I

SELF-GOVERNMENT

Section 111

The peoples of the Marshall Islands and the Federated States of Micronesia, acting through the Governments established under their respective Constitutions, are self-governing.

ARTICLE II

FOREIGN AFFAIRS

Section 121

(a) The Governments of the Marshall Islands and the Federated States of Micronesia have the capacity to conduct foreign affairs and shall do so in their own name and right, except as otherwise provided in this Compact.

(b) The foreign affairs capacity of the Governments of the Marshall Islands and the Federated States of Micronesia includes:

(1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law;

(2) the conduct of their commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and international and intergovernmental organizations, including any matters specially benefiting their individual citizens.

(c) The Government of the United States recognizes that the Governments of the Marshall Islands and the Federated States of Micronesia have the capacity to enter into, in their own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of their foreign affairs, the Governments of the Marshall Islands and the Federated States of Micronesia confirm that they shall act in accordance with principles of international law and shall settle their international disputes by peaceful means.

Section 122

The Government of the United States shall support applications by the Governments of the Marshall Islands and the Federated States of Micronesia for membership or other participation in regional or international organizations as may be mutually agreed. The Government of the United States agrees to accept for training and instruction at the Foreign Service Institute, established under 22 U.S.C. 4021, citizens of the Marshall Islands and the Federated States of Micronesia. The qualifications of candidates for such training and instruction and all other terms and conditions of participation by citizens of the Marshall Islands and the Federated States of Micronesia in Foreign Service Institute programs shall be as mutually agreed between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia.

Section 123

(a) In recognition of the authority and responsibility of the Government of the United States under Title Three, the Governments of the Marshall Islands and the Federal States of Micronesia shall consult, in the conduct of their foreign affairs, with the Government of the United States.

(b) In recognition of the respective foreign affairs capacities of the Governments of the Marshall Islands and the Federated States of Micronesia, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of the Marshall Islands or the Federated States of Micronesia on matters which the Government of the United States regards as relating to or affecting any such Government.

Section 124

The Government of the United States may assist or act on behalf of the Government of the Marshall Islands or the Federated States of Micronesia in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of the Marshall Islands or the Federated States of Micronesia undertaken with the assistance or through the agency of the Government of the United States pursuant to this Section unless expressly agreed.

Section 125

The Government of the United States shall not be responsible for nor obligated by any actions taken by the Government of the Marshall Islands or the Federated States of

Micronesia in the area of foreign affairs, except as may from time to time be expressly agreed.

Section 126

At the request of the Government of the Marshall Islands or the Federated States of Micronesia and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of the Marshall Islands and the Federated States of Micronesia for travel outside the Marshall Islands and the Federated States of Micronesia, the United States and its territories and possessions.

Section 127

Except as otherwise provided in this Compact or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as Administering Authority which have resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact are no longer assumed and enjoyed by the Government of the United States.

ARTICLE III

COMMUNICATIONS

Section 131

(a) The Governments of the Marshall Islands and the Federated States of Micronesia have full authority and responsibility to regulate their respective domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a separate agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

(1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency assignments to radio communications stations respectively in the Marshall Islands and the Federated States of Micronesia; and to submit to the Interntional Frequency Registration Board seasonal schedules for the broadcasting stations respectively in the Marshall Islands and the Federated States of Micronesia in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kHz and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and

(2) the United States Federal Communications Commission has jurisdication, pursuant to the Communications Act of 1934, 47 U.S.C. 151 et. seq., and the Communications Satellite Act of 1962, 47 U.S.C. 721 et. seq., over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in the Marshall Islands or the Federated States of Micronesia.

(b) The Government of the Marshall Islands or the Federated States of Micronesia may elect at any time to undertake the functions enumerated in Section 131(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the electing Government the notification authority referred to in Section 131(a) and all rights deriving from the previous exercise of any such notification authority by the Government of the United States.

Section 132

The Governments of the Marshall Islands and the Federated States of Micronesia shall permit the Government of the United States to operate telecommunications services in the Marshall Islands and the Federated States of Micronesia to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of separate agreements which shall come into effect simultaneously with this Compact.

ARTICLE IV

IMMIGRATION

Section 141

(a) Any person in the following categories may enter into, lawfully engage in occupations, and establish residence as a non-immigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26):

(1) a person who, on the day preceding the effective date of this Compact, is a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become a citizen of the Marshall Islands or the Federated States of Micronesia;

(2) a person who acquires the citizenship of the Marshall Islands or the Federated States of Micronesia at birth, on or after the effective date of the respective Constitution;

(3) a naturalized citizen of the Marshall Islands or the Federated States of Micronesia who has been an

actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence; or

(4) a person entitled to citizenship in the Marshall Islands by lineal descent whose name is included in a list to be furnished by the Government of the Marshall Islands to the United States Immigration and Naturalization Service and any descendants of such persons, provided that such person holds a certificate of lineal descent issued by the Government of the Marshall Islands.

Such persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States.

(b) The right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to nondiscriminatory limitations provided for:

(1) in statutes or regulations of the United States; or

(2) in those statutes or regulations of the territory or possession concerned which are authorized by the laws of the United States.

(c) Section 141(a) does not confer on a citizen of the Marshall Islands or the Federated States of Micronesia the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of the Marshall Islands or the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may enter into, lawfully engage in occupations, and reside in the Marshall Islands or the Federated States of Micronesia, subject to the rights of those Governments to deny entry to or deport any such citizen or national as an undesirable alien. A citizen or national of the United States may establish habitual residence or domicile in the Marshall Islands or the Federated States of Micronesia only in accordance with the laws of the jurisdiction in which habitual residence or domicile is sought.

(b) With respect to the subject matter of this Section, the Government of the Marshall Islands or the Federated States of Micronesia shall accord to citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries; any denial of entry to or deportation of a citizen or national of the United States as an undesirable alien must be pursuant to reasonable statutory grounds.

Section 143

(a) The privileges set forth in Sections 141 and 142 shall not apply to any person who takes an affirmative step to preserve or acquire a citizenship or nationality other than that of the Marshall Islands, the Federated States of Micronesia or the United States.

(b) Every person having the privileges set forth in Sections 141 and 142 who possesses a citizenship or nationality other than that of the Marshall Islands, the Federated States of Micronesia or the United States ceases to have these privileges two years after the effective date of this Compact, or within six months after becoming 21 years of age, whichever comes later, unless such person executes an oath of renunciation of that other citizenship or nationality.

Section 144

(a) A citizen or national of the United States who, after notification to the Government of the United States of an intention to employ such person by the Government of the Marshall Islands or the Federated States of Micronesia, commences employment with such Government shall not be deprived of his United States nationality pursuant to Section 349(a)(2) and (a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1481 (a)(2) and (a)(4).

Upon such notification by the Government of the Marshall Islands or the Federated States of Micronesia, the Government of the United States may consult with or provide information to the notifying Government concerning the prospective employee, subject to the provisions of the Privacy Act, 5 U.S.C. 552a.

(c) The requirement of prior notification shall not apply to those citizens or nationals of the United States who are employed by the Government of the Marshall Islands or the Federated States of Micronesia on the effective date of this Compact with respect to the positions held by them at that time.

ARTICLE V

REPRESENTATION

Section 151

The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia may establish and maintain representative offices in the capital of the other for the purpose of maintaining close and regular consultations on matters arising in the course of the relationship of free association and conducting other government business. The Governments may establish and maintain additional offices on terms and in locations as may be mutually agreed.

Section 152

(a) The premises of such representative offices, and their archives wherever located, shall be inviolable. The property and assets of such representative offices shall be immune from search, requisition, attachment and any form of seizure unless such immunity is expressly waived. Official communications in transit shall be inviolable and accorded the freedom and protections accorded by recognized principles of international law to official communications of a diplomatic mission.

(b) Persons designated by the sending Government may serve in the capacity of its resident representatives with the consent of the receiving Government. Such designated persons shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions as such representatives, except insofar as such immunity may be expressly waived by the sending Government. While serving in a resident representative capacity, such designated persons shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents.

(c) The sending Governments and their respective assets, income and other property shall be exempt from all direct taxes, except those direct taxes representing payment for specific goods and services, and shall be exempt from all customs duties and restrictions on the import or export of articles required for the official functions and personal use of their representatives and representative offices.

(d) Persons designated by the sending Government to serve in the capacity of its resident representatives shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations.

(e) The privileges, exemptions and immunities accorded under this Section are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government to which they are assigned.

Section 153

(a) Any citizen or national of the United States who, after consultation between the designating Government and the Government of the United States, is designated by the Government of the Marshall Islands or the Federated States of Micronesia as its agent, shall enjoy exemption from the requirements of the laws of the United States relating to the registration of foreign agents. The Government of the United States shall promptly comply with a request for consultation made by the prospective designating Government. During the course of the consultation, the Government of the United States may, in its discretion, and subject to the provisions of the Privacy Act, 5 U.S.C. 552a, transmit such information concerning the prospective designee as may be available to it to the prospective designating Government.

(b) Any citizen or national of the United States may be employed by the Government of the Marshall Islands or the Federated States of Micronesia to represent to foreign governments, officers or agents thereof the positions of the Government of the Marshall Islands or the Federated States of Micronesia, without regard to the provisions of 18 U.S.C. 953.

ARTICLE VI

ENVIRONMENTAL PROTECTION

Section 161

The Governments of the United States, the Marshall Islands and the Federated States of Micronesia declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Marshall Islands and the Federated States of Micronesia. In order to carry out this policy, the Government of the United States and the Governments of the Marshall Islands and the Federated

States of Micronesia agree to the following mutual and reciprocal undertakings.

(a) The Government of the United States:

(1) shall continue to apply the environmental controls in effect on the day preceding the effective date of this Compact to those of its continuing activities subject to Section 161(a)(2), unless and until those controls are modified under Sections 161(a)(3) and 161(a)(4);

(2) shall apply the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 et seq., to its activities under the Compact and its related agreements as if the Marshall Islands and the Federated States of Micronesia were the United States;

(3) shall comply also, in the conduct of any activity requiring the preparation of an Environmental Impact Statement under Section 161(a)(2), with standards substantively similar to those required by the following laws of the United States, taking into account the particular environments of the Marshall Islands and the Federated States of Micronesia: the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 et seq.; the Clean Air Act, 77 Stat. 392, 42 U.S.C. Supp. 7401 et seq.; the Clean Water Act (Federal Water Pollution Control Act), 86 Stat. 896, 33 U.S.C.

1251 et seq.; the Ocean Dumping Act (Title I of the Marine Protection, Research and Sanctuaries Act of 1972), 86 Stat. 1053, 33 U.S.C. 1411 et seq.; the Toxic Substances Control Act, 90 Stat. 2003, 15 U.S.C. 2601 et seq.; the Resources Conservation and Recovery Act of 1976, 90 Stat. 2796, 42 U.S.C. 6901 et seq.; and such other environmental protection laws of the United States as may be mutually agreed from time to time with the Government of the Marshall Islands or the Federated States of Micronesia; and

(4) shall develop, prior to conducting any activity requiring the preparation of an Environmental Impact Statement under Section 161(a)(2), appropriate mechanisms, including regulations or other judicially reviewable standards and procedures, to regulate its activities governed by Section 161(a)(3) in the Marshall Islands and the Federated States of Micronesia in a manner appropriate to the special governmental relationship set forth in this Compact. The agencies of the Government of the United States designated by law to administer the laws set forth in Section 161(a)(3) shall participate as appropriate in the development of any regulation, standard or procedure under this Section, and the Government of the United States shall provide the affected Government of the Marshall Islands or the Federated

States of Micronesia with the opportunity to comment during such development.

(b) The Governments of the Marshall Islands and the Federated States of Micronesia shall develop standards and procedures to protect their environments. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Governments of the Marshall Islands and the Federated States of Micronesia, taking into account their particular environments, shall develop standards for environmental protection substantively similar to those required of the Government of the United States by Section 161(a)(3) prior to their conducting activities in the Marshall Islands and the Federated States of Micronesia, respectively, substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 161(a), including any standard or procedure applicable thereunder, and Section 161(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia.

(d) In the event that an Environmental Impact Statement is no longer required under the laws of the United States for major federal actions significantly affecting the quality of the human environment, the regulatory regime established under Sections 161(a)(3) and 161(a)(4) shall continue to apply to such activities of the Government of the United States until amended by mutual agreement.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard or procedure which may be applicable under Sections 161(a)(3) and 161(a)(4) if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the affected Government of the Marshall Islands or the Federated States of Micronesia shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the affected Government.

(f) The laws of the United States referred to in Sections 161(a)(3) shall apply to the activities of the Government of the United States under this Compact and its related agreements only to the extent provided for in this Section.

Section 162

The Government of the Marshall Islands or the Federated States of Micronesia may bring an action for judicial review of any administrative agency action or any activity of the Government of the United States pursuant to Sections 161(a), 161(d) or 161(e) or for enforcement of the obligations of the Government of the United States arising thereunder. The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction over such action or activity, and over actions brought under Section 172(b) which relate to the activities of the Government of the United States and its officers and employees, governed by Section 161, provided that:

(a) Such actions may only be civil actions for any appropriate civil relief other than punitive damages against the Government of the United States or, where required by law, its officers in their official capacity; no criminal actions may arise under this Section;

(b) Actions brought pursuant to this Section may be initiated only by the Government concerned;

(c) Administrative agency actions arising under Section 161 shall be reviewed pursuant to the standard of judicial review set forth in 5 U.S.C. 706;

(d) The District Court shall have jurisdiction to issue all necessary processes, and the Government of the United

States agrees to submit itself to the jurisdiction of the court; decisions of the District Court shall be reviewable in the United States Court of Appeals for the Ninth Circuit or the United States Court of Appeals for the District of Columbia, respectively, or in the United States Supreme Court as provided by the laws of the United States;

(e) The judicial remedy provided for in this Section shall be the exclusive remedy for the judicial review or enforcement of the obligations of the Government of the United States under this Article and actions brought under Section 172(b) which relate to the activities of the Government of the United States and its officers and employees governed by Section 161; and

(f) In actions pursuant to this Section, the Governments of the Marshall Islands and the Federated States of Micronesia shall be treated as if they were United States citizens.

Section 163

(a) For the purpose of gathering data necessary to study the environmental effects of activities of the Government of the United States subject to the requirements of this Article, the Governments of the Marshall Islands and the Federated States of Micronesia shall be granted access to facilities operated by the Government of the United States in the Marshall Islands and the Federated States of Micronesia, to the extent necessary for this purpose, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the United States under Title Three.

(b) The Government of the United States, in turn, shall be granted access to the Marshall Islands or the Federated States of Micronesia for the purpose of gathering data necessary to discharge its obligations under this Article, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the Marshall Islands or the Federated States of Micronesia under Title One, and to the extent necessary for this purpose shall be granted access to documents and other information to the same extent similar access is provided those Governments under the Freedom of Information Act, 5 U.S.C. 552.

(c) The Governments of the Marshall Islands and the Federated States of Micronesia shall not impede efforts by the Government of the United States to comply with applicable standards and procedures.

ARTICLE VII

GENERAL LEGAL PROVISIONS

Section 171

Except as provided in this Compact or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceases with respect to the Marshall Islands and the Federated States of Micronesia as of the effective date of this Compact.

Section 172

(a) Every citizen of the Marshall Islands or the Federated States of Micronesia who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any non-resident alien.

(b) The Governments of the Marshall Islands and the Federated States of Micronesia and every citizen of the Marshall Islands or the Federated States of Micronesia shall be considered a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701–706, except that only the Government of the Marshall Islands or the Federated States of Micronesia may seek judicial review under the Administrative Procedure Act or judicial enforcement under the Freedom of Information Act when judicial review or enforcement relates to the activities of the Government of the United States governed by Sections 161 and 162.

Section 173

The Governments of the United States, the Marshall Islands and the Federated States of Micronesia agree to adopt and enforce such measures, consistent with this Compact and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in the Marshall Islands and the Federated States of Micronesia pursuant to this Compact and its related agreements and by those Governments in the United States pursuant to this Compact and its related agreements.

Section 174

Except as otherwise provided in this Compact and its related agreements:

(a) The Governments of the Marshall Islands and the Federated States of Micronesia shall be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall be immune from the jurisdiction of the courts of the Marshall Islands and the Federated States of Micronesia.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the Trust Territory of the Pacific Islands or the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the

Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the effective date of this Compact; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands, pending as of the effective date of this Compact, against the Government of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in Section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact shall be adjudicated in the same manner as a claim adjudicated according to Section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in Section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Governments of the Marshall Islands and the Federated States of Micronesia shall not be immune from the jursidiction of the courts of the United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of the Marshall Islands and the Federated States of Micronesia in any case in which the action is based on a commercial activity of the defendant Government where the action is brought, or in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought.

A separate agreement, which shall come into effect simultaneously with this Compact, shall be concluded between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners. The separate agreement shall have the force of law. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188–3195, shall be applicable to the extradition of the fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100–4115, shall be applicable to the transfer of prisoners under the separate agreement.

Section 176

The Governments of the Marshall Islands and the Federated States of Micronesia confirm that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of the Marshall Islands and the Federated States of Micronesia to grant relief from the judgments in appropriate cases.

Section 177

(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, the Federated States of Micronesia or Palau for loss or damage to property and person of the citizens of the Marshall Islands, the Federated States of Micronesia or resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.

(b) The Government of the United States and the Government of the Marshall Islands shall set forth in a separate agreement provisions for the just and adequate settlement of all such claims which have arisen in regard to the Marshall Islands and its citizens and which have not as yet been compensated or which in the future may arise, for the continued administration by the Government of the United States of direct radiation related medical surveillance and treatment programs and radiological monitoring activities and for such additional programs and activities as may be mutually agreed, and for the assumption by the Government of the Marshall Islands of responsibility for enforcement of limitations on the utilization of affected areas developed in cooperation with the Government of the United States and for the assistance by the Government of the United States in the exercise of such responsibility as may be mutually agreed. This separate agreement shall come into effect simultaneously with this Compact and shall remain in effect in accordance with its own terms.

(c) The Government of the United States shall provide to the Government of the Marshall Islands on a grant basis, the amount of $150 million to be paid and distributed in accordance with the separate agreement referred to in this Section, and shall provide the services and programs set forth in this separate agreement, the language of which is incorporated into this Compact.

Section 178

(a) The federal agencies of the Government of the United States which provide the services and related programs in the Marshall Islands or the Federated States of Micronesia pursuant to Articles II and III of Title Two are authorized to settle and pay tort claims arising in the Marshall Islands or the Federated States of Micronesia from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in Section 178(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under Section 178(a) which cannot be settled under Section 178(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia shall, in the separate agreements referred to in Section 232, provide for:

(1) the administrative settlement of claims referred to in Section 178(a), including designation of local agents in the Marshall Islands and each State of the Federated States of Micronesia; such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such separate agreements; and

(2) arbitration, referred to in Section 178(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to Section 178(a).

(d) The provisions of Section 174(d) shall not apply to claims covered by this Section.

TITLE TWO

ARTICLE I

GRANT ASSISTANCE

Section 211

(a) In order to assist the Governments of the Marshall Islands and the Federated States of Micronesia in their efforts to advance the economic self-sufficiency of their peoples and in recognition of the special relationship that exists between them and the United States, the Government of the United States shall provide on a grant basis the following amounts:

(1) to the Government of the Marshall Islands, $26.1 million annually for five years commencing on the effective date of this Compact, $22.1 million annually for five years commencing on the fifth anniversary of the effective date of this Compact, and $19.1 million annually for five years commencing on the tenth anniversary of this Compact. Over this fifteen-year period, the Government of the Marshall Islands shall dedicate an average of no less than 40 percent of these amounts to the capital account subject to provision for revision of this percentage incorporated into the plan referred to in Section 211(b).

(2) to the Government of the Federated States of Micronesia, $60 million annually for five years commencing on the effective date of this Compact, $51 million annually for five years commencing on the fifth anniversary of the effective date of this Compact, and $40 million annually for five years commencing on the tenth anniversary of the effective date of this Compact. Over this fifteen-year period, the Government of the Federated States of Micronesia shall dedicate an average of no less than 40 percent of these amounts annu-

ally to the capital account subject to provision for revision of this percentage incorporated into the plan referred to in Section 211(b). To take into account the special nature of the assistance, to be provided under this paragraph and Sections 212(b), 213(c), 214(c), 215(a)(3), 215(b)(3), 216(a), 216(b), 221(a), and 221(b), the division of these amounts among the national and state governments of the Federated States of Micronesia shall be certified to the Government of the United States by the Government of the Federated States of Micronesia.

(b) The annual expenditure of the grant amounts specified for the capital account in Section 211(a) by the Governments of the Marshall Islands and the Federated States of Micronesia shall be in accordance with official overall economic development plans provided by those Governments and concurred in by the Government of the United States prior to the effective date of this Compact. These plans may be amended from time to time by the Government of the Marshall Islands or the Federated States of Micronesia.

(c) The Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia recognize that the achievement of the goals of the plans referred to in Section 211(b) depends upon the availability of adequate internal revenue as well as economic assistance from sources outside of the Marshall Islands and the Federated States of Micronesia, including the Government of the United States, and may, in addition, be affected by the impact of exceptional, economically adverse circumstances. Each of the Governments of the Marshall Islands and the Federated States of Micronesia shall therefore report annually to the President of the United States and to the Congress of the United States on the implementation of the plans and on their use of the funds specified in this Article. These reports shall outline the achievements of the plans to date and the need, if any, for an additional authorization and appropriation of economic assistance for that year to account for any exceptional, economically adverse circumstances. It is understood that the Government of the United States cannot be committed by this Section to seek or support such additional economic assistance.

Section 212

(a) In recognition of the special development needs of the Federated States of Micronesia, the Government of the United States shall provide to the Government of the Federated States of Micronesia $1 million annually for fourteen years commencing on the first anniversary of the effective date of this Compact. This amount may be used by the Government of the Federated States of Micronesia to defray current account expenditures attendant to the operation of the

United States military Civic Action Teams made available in accordance with the separate agreement referred to in Section 227.

Section 213

(a) The Government of the United States shall provide on a grant basis $1.9 million annually to the Government of the Marshall Islands in conjunction with Section 321(a). The Government of the Marshall Islands, in its use of such funds, shall take into account the impact of the activities of the Government of the United States in the Kwajalein Atoll area of the Marshall Islands.

(b) The Government of the United States shall provide on a grant basis to the Government of the Federated States of Micronesia the sum of $160,000 in conjunction with Section 321(a). This sum shall be made available concurrently with the grant assistance provided pursuant to this Article during the first year after the effective date of this Compact. The Government of the Federated States of Micronesia, in its use of such funds, shall take into account the impact of the activities of the Government of the United States in Yap State, Federated States of Micronesia.

Section 214

As a contribution to efforts aimed at achieving increased self-sufficiency in energy production, the Government of the United States shall provide on a current account grant basis for fourteen years commencing on the first anniversary of the effective date of this Compact the following amounts:

(a) To the Government of the Marshall Islands, $2 million annually; and

(b) To the Government of the Federated States of Micronesia, $3 million annually.

Section 215

(a) As a contribution to the current account operations and maintenance of communications systems, the Government of the United States shall provide on a grant basis for fifteen years commencing on the effective date of this Compact the following amounts:

(1) to the Government of the Marshall Islands, $300,000 annually; and

(2) to the Government of the Federated States of Micronesia, $600,000 annually.

(b) For the purpose of acquiring such communications hardware as may be located within the Marshall Islands and the Federated States of Micronesia or for such other current or capital account activity as may be selected, the Government of the United States shall provide, concurrently with the grant assistance provided pursuant to this Article during the first year after the effective date of this Compact, the sum of $9 million to be allocated as follows:

(1) to the Government of the Marshall Islands, $3 million; and

(2) to the Government of the Federated States of Micronesia, $6 million.

Section 216

(a) The Government of the United States shall provide on a current account basis an annual grant of $5.369 million for fifteen years commencing on the effective date of this Compact for the purposes set forth below:

(1) $890,000 annually for the surveillance and enforcement by the Governments of the Marshall Islands and the Federated States of Micronesia of their respective maritime zones;

(2) $1.791 million annually for health and medical programs, including referrals to hospital and treatment centers; and

(3) $2.687 million annually for a scholarship fund or funds to support the post-secondary education of citizens of the Marshall Islands and the Federated States of Micronesia attending United States accredited, post-secondary institutions in the United States, its territories and possessions, the Marshall Islands or the Federated States of Micronesia. The curricular criteria for the award of scholarships shall be designed to ad-

vance the purposes of the plans referred to in Section 211(b).

(b) The Government of the United States shall provide the sum of $1.333 million as a contribution to the commencement of activities pursuant to Section 216(a)(1).

(c) The annual grants referred to in Section 216(a) and the sum referred to in Section 216(b) shall be made available by the Government of the United States promptly after it receives instruction for their distribution agreed upon by the Governments of the Marshall Islands and the Federated States of Micronesia.

Section 217

Except as otherwise provided, the amounts stated in Sections 211, 212, 214, 215 and 231 shall be adjusted for each Fiscal Year by the percent which equals two-thirds of the percentage change in the United States Gross National Product Implicit Price Deflator, or seven percent, whichever is less in any one year, using the beginning of Fiscal Year 1981 as the base.

Section 218

If in any year the funds made available by the Government of the United States for that year pursuant to this Article or Section 231 are not completely obligated by the recipient Government, the unobligated balances shall remain available in addition to the funds to be provided in subsequent years.

Section 219

All funds previously appropriated to the Trust Territory of the Pacific Islands which are unobligated by the Government of the Trust Territory of the Pacific Islands as of the effective date of this Compact shall accure to the Governments of the Marshall Islands and the Federated States of Micronesia for the purposes for which such funds were originally appropriated as determined for the Government of the United States.

ARTICLE II

PROGRAM ASSISTANCE

Section 221

(a) The Government of the United States shall make available to the Marshall Islands and the Federated States of Micronesia, in accordance with and to the extent provided in the separate agreements referred to in Section 232, without compensation and at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Compact, the services and related programs:

(1) of the United States Weather Service;

(2) of the United States Federal Emergency Management Agency;

(3) provided pursuant to the Postal Reorganization Act, 39 U.S.C. 101 et seq.

(4) of the United States Federal Aviation Administration; and

(5) of the United States Civil Aeronautics Board or its successor agencies which has the authority to implement the provisions of paragraph 5 of Article IX of such separate agreements, the language of which is incorporated into this Compact.

(b) The Government of the United States, recognizing the special needs of the Marshall Islands and the Federated States of Micronesia particularly in the fields of education and health care, shall make available, as provided by the laws of the United States, the annual amount of $10 million which shall be allocated in accordance with the provisions of the separate agreement referred to in Section 232.

(c) The Government of the United States shall make available to the Marshall Islands and the Federated States of Micronesia such alternate energy development projects, studies and conservation measures as are applicable to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact, for the purposes and duration provided in the laws of the United States.

(d) The Government of the United States shall have and exercise such authority as is necessary for the purposes of this Article and as is set forth in the separate agreements referred to in Section 232, which shall also set forth the extent to which services and programs shall be provided to the Marshall Islands and the Federated States of Micronesia.

Section 222

The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia shall consult regularly or upon request regarding:

(a) The economic development of the Marshall Islands or the Federated States of Micronesia; or

(b) The services and programs referred to in this Article. These services and programs shall continue to be provided by the Government of the United States unless their modification is provided by mutual agreement or their termination in whole or in part is requested by any recipient Government.

Section 223

The citizens of the Marshall Islands and the Federated States of Micronesia who are receiving post-secondary educational assistance from the Government of the United States on the day preceding the effective date of this Compact shall continue to be eligible, if otherwise qualified, to receive such assistance to complete their academic programs for maximum of four years after the effective date of this Compact.

Section 224

The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia may agree from time to time to the extension of additional United States grant assistance, services and programs as provided by the laws of the United States, to the Marshall Islands or the Federated States of Micronesia, respectively.

Section 225

The Governments of the Marshall Islands and the Federated States of Micronesia shall make available to the Government of the United States at no cost such land as may be necessary for the operations of the services and programs provided pursuant to this Article, and such facilities as are provided by the Government of the Marshall Islands or the Federated States of Micronesia at no cost to the Government of the United States as of the effective date of this Compact or as may be mutually agreed thereafter.

Section 226

The Governments of the Marshall Islands and the Federated States of Micronesia may request, from time to time, technical assistance from the federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its laws and which shall grant such technical assistance in a manner which gives priority consideration to the Marshall Islands and the Federated States of Micronesia over other recipients not a part of the United States, its territories or possessions. The Government of the United States shall coordinate the provision of such technical assistance in consultation with the respective recipient Government.

Section 227

In recognition of the special development needs of the Federated States of Micronesia, the Government of the United States shall make available United States military Civic Action Teams for use in the Federated States of Micronesia under terms and conditions specified in a separate agreement which shall come into effect simultaneously with this Compact.

ARTICLE III

ADMINISTRATIVE PROVISIONS

Section 231

Upon the thirteenth anniversary of the effective date of this Compact, the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia shall commence negotiations regarding those provisions of this Compact which expire on the fifteenth anniversary of its effective date. If these negotiations are not concluded by the fifteenth anniversary of the effective date of this Compact, the period of negotiations shall extend for not more than two additional years, during which time the provisions of this Compact including Title Three shall remain in full force and effect. During this additional period of negotiations, the Government of the United States shall continue its assistance to the Governments with which it is negotiating pursuant to this Section at a level which is the average of the annual amount granted pursuant to Sections 211, 212, 213, 214, 215 and 216 during the first fifteen years of this Compact. The average annual amount paid pursuant to Sections 211, 212, 214 and 215 shall be adjusted pursuant to Section 217.

Section 232

The specific nature, extent and contractual arrangements of the services and programs provided for in Section 221 as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in the Marshall Islands or the Federated States of Micronesia, and other arrangements in connection with a service or program furnished by the Government of the United States, are set forth in separate agreements which shall come into effect simultaneously with this Compact.

Section 233

The Government of the United States, in consultation with the Governments of the Marshall Islands and the Federated States of Micronesia, shall determine and implement procedures for the periodic audit of all grants and other assistance made under Article I of this Title and of all funds expended for the services and programs provided under Article II of this Title. Such audits shall be conducted on an annual basis during the first five years following the effective date of this Compact and shall be at no cost to the Government of the Marshall Islands or the Federated States of Micronesia.

Section 234

Title to the property of the Government of the United States situated in the Trust Territory of the Pacific Islands or acquired for or used by the Government of the Trust Territory of the Pacific Islands on or before the day preceding the effective date of this Compact shall, without reimbursement or transfer of funds, vest in the Governments of the Marshall Islands and the Federated States of Micronesia as set forth in a separate agreement which shall come into effect simultaneously with this Compact. The provisions of this Section shall not apply to the property of the Government of the United States for which the Government of the United States determines a continuing requirement.

Section 235

(a) Funds held in trust by the High Commissioner of the Trust Territory of the Pacific Islands, in his official capacity, as of the effective date of this Compact shall remain available as trust funds to their designated beneficiaries. The Government of the United States, in consultation with the Government of the Marshall Islands or the Federated States of Micronesia, shall appoint a new trustee who shall exercise the functions formerly exercised by the High Commissioner of the Trust Territory of the Pacific Islands.

(b) To provide for the continuity of administration, and to assure the Governments of the Marshall Islands and the Federated States of Micronesia that the purposes of the laws of the United States are carried out and that the funds of any other trust fund in which the High Commissioner of the Trust Territory of the Pacific Islands has authority of a statutory or customary nature shall remain available as trust funds to their designated beneficiaries, the Government of the United States agrees to assume the authority formerly vested in the High Commissioner of the Trust Territory of the Pacific Islands.

Section 236

Except as otherwise provided, approval of this Compact by the Government of the United States shall constitute a pledge of the full faith and credit of the United States for the full payment of the sums and amounts specified in Articles I and III of this Title. The obligation of the United States under Articles I and III of this Title shall be enforceable in the United States Claims Court, or its successor court, which shall have jurisdiction in cases arising under this Section, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States.

ARTICLE IV

TRADE

Section 241

The Marshall Islands and the Federated States of Micronesia are not included in the customs territory of the United States.

Section 242

For the purpose of assessing duties on their products imported into the customs territory of the United States, the Marshall Islands and the Federated States of Micronesia shall be treated as if they were insular possessions of the United States within the meaning of General Headnote 3(a) of the Tariff Schedules of the United States. The exceptions, valuation procedures and all other provisions of General Headnote 3(a) shall apply to any product deriving from the Marshall Islands or the Federated States of Micronesia.

Section 243

All products of the Marshall Islands or the Federated States of Micronesia imported into the customs territory of the United States which are not accorded the treatment set forth in Section 242 and all products of the United States imported into the Marshall Islands or the Federated States of Micronesia shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage or use.

ARTICLE V

FINANCE AND TAXATION

Section 251

The currency of the United States is the official circulating legal tender of the Marshall Islands and the Federated States of Micronesia. Should the Government of the Marshall Islands or the Federated States of Micronesia act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of the Marshall Islands or the Federated States of Micronesia may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as such Government deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact be made according to the United States Internal Revenue Code.

Section 253

A citizen of the Marshall Islands or the Federated States of Micronesia, domiciled therein, shall be exempt from:

(a) Income taxes imposed by the Government of the United States upon fixed or determinable annual income; and

(b) Estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States.

Section 254

(a) In determining any income tax imposed by the Government of the Marshall Islands or the Federated States of Micronesia, those Governments shall have authority to impose tax upon income derived by a resident of the Marshall Islands or the Federated States of Micronesia from sources without the Marshall Islands and the Federated States of Micronesia, in the same manner and to the same extent as those Governments impose tax upon income derived from within their respective jurisdictions. If the Government of the Marshall Islands or the Federated States of Micronesia exercises such authority as provided in this subsection, any individual resident of the Marshall Islands or the Federated States of Micronesia who is subject to tax by the Government of the United States on income which is also taxed by the Government of the Marshall Islands or the Federated States of Micronesia shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. For purposes of this Section, the term "resident of the Marshall Islands or the Federated States of Micronesia" shall be deemed to include any person who was physically present in the Marshall Islands or the Federated States of Micronesia for a period of 183 or more days during any taxable year; provided, that as between the Governments of the Marshall Islands and the Federated States of Micronesia, the authority to tax an individual resident of the Marshall Islands or the Federated States of Micronesia in respect of income from sources without the Marshall Islands and the Federated States of Micronesia as provided in this subsection may be exercised only by the Government in whose jurisdiction such individual was physically present for the greatest number of days during the taxable year.

(b) If the Government of the Marshall Islands or the Federated States of Micronesia subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in section 254(a).

Section 255

Where not otherwise manifestly inconsistent with the intent of this Compact, provisions in the United States Internal Revenue Code that are applicable to possessions of the United States as of January 1, 1980 shall be treated as applying to the Marshall Islands and the Federated States of Micronesia. If such provisions of the Internal Revenue Code are amended, modified or repealed after that date, such provisions shall continue in effect as to the Marshall Islands and the Federated States of Micronesia for a period of two years during which time the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia shall negotiate an agreement which shall provide benefits substantively equivalent to those which obtained under such provisions.

TITLE THREE

ARTICLE I

AUTHORITY AND RESPONSIBILITY

Section 311

(a) The Government of the United States has full authority and responsibility for security and defense matters in or relating to the Marshall Islands and the Federated States of Micronesia.

(b) This authority and responsibility includes:

(1) the obligation to defend the Marshall Islands and the Federated States of Micronesia and their peo-

ples from attack or threats thereof as the United States and its citizens are defended;

(2) the option to foreclose access to or use of the Marshall Islands and the Federated States of Micronesia by military personnel or for the military purposes of any third country; and

(3) the option to establish and use military areas and facilities in the Marshall Islands and the Federated States of Micronesia, subject to the terms of the separate agreements referred to in Sections 321 and 323.

(c) The Government of the United States confirms that it shall act in accordance with the principles of international law and the Charter of the United Nations in the exercise of this authority and responsibility.

Section 312

Subject to the terms of any agreements negotiated in accordance with Sections 321 and 323, the Government of the United States may conduct within the lands, waters and airspace of the Marshall Islands and the Federated States of Micronesia the activities and operations necessary for the exercise of its authority and responsibility under this Title.

Section 313

(a) The Governments of the Marshall Islands and the Federated States of Micronesia shall refrain from actions which the Government of the United States determines, after appropriate consultation with those Governments, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Marshall Islands and the Federated States of Micronesia.

(b) The consultations referred to in this Section shall be conducted expeditiously at senior levels of the Governments concerned, and the subsequent determination by the Government of the United States referred to in this Section shall be made only at senior interagency levels of the Government of the United States.

(c) The Government of the Marshall Islands or the Federated States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of State personally and the United States Secretary of Defense personally regarding any determination made in accordance with this Section.

Section 314

(a) Unless otherwise agreed, the Government of the United States shall not, in the Marshall Islands or the Federated States of Micronesia:

(1) test by detonation or dispose of any nuclear weapon, nor test, dispose of, or discharge any toxic chemical or biological weapon; or

(2) test, dispose of, or discharge any other radioactive, toxic chemical or biological materials in an

amount or manner which would be hazardous to public health or safety.

(b) Unless otherwise agreed, other than for transit or overflight purposes or during time of a national emergency declared by the President of the United States, a state of war declared by the Congress of the United States or as necessary to defend against an actual or impending armed attack on the United States, the Marshall Islands or the Federated States of Micronesia, the Government of the United States shall not store in the Marshall Islands or the Federated States of Micronesia any toxic chemical weapon, nor any radioactive materials nor any toxic chemical materials intended for weapons use.

(c) Radioactive, toxic chemcial, or biological materials not intended for weapons use shall not be affected by Section 314(b).

(d) No material or substance referred to in this Section shall be stored in the Marshall Islands or the Federated States of Micronesia except in an amount and manner which would not be hazardous to public health or safety. In determining what shall be an amount or manner which would be hazardous to public health or safety under this Section, the Government of the United States shall comply with any applicable mutual agreement, international guidelines accepted by the Government of the United States, and the laws of the United States and their implementing regulations.

(e) Any exercise of the exemption authority set forth in Section 161(e) shall have no effect on the obligations of the Government of the United States under this Section or on the application of this subsection.

(f) The provisions of this Section shall apply in the areas in which the Government of the Marshall Islands or the Federated States of Micronesia exercises jurisdiction over the living resources of the seabed, subsoil or water column adjacent to its coasts.

Section 315

The Government of the United States may invite members of the armed forces of other countries to use military areas and facilities in the Marshall Islands or the Federated States of Micronesia, in conjunction with and under the control of United States Armed Forces. Use by units of the armed forces of other countries of such military areas and facilities, other than for transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval by the Government of the Marshall Islands or the Federated States of Micronesia.

Section 316

The authority and responsibility of the Government of the United States under this Title may not be transferred or otherwise assigned.

Article II

DEFENSE FACILITIES AND OPERATING RIGHTS

Section 321

(a) Specific arrangements for the establishment and use by the Government of the United States of military areas and facilities in the Marshall Islands or the Federated States of Micronesia are set forth in separate agreements which shall come into effect simultaneously with this Compact.

(b) If, in the exercise of its authority and responsibility under this Title, the Government of the United States requires the use of areas within the Marshall Islands or the Federated States of Micronesia in addition to those for which specific arrangements are concluded pursuant to Section 321(a), it may request the Government concerned to satisfy those requirements through leases or other arrangements. The Government of the Marshall Islands or the Federated States of Micronesia shall sympathetically consider any such request and shall establish suitable procedures to discuss it with and provide a prompt response to the Government of the United States.

(c) The Government of the United States recognizes and respects the scarcity and special importance of land in the

Marshall Islands and the Federated States of Micronesia. In making any requests pursuant to Section 321(b), the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy its requirement through public real property, where available, rather than through private real property.

Section 322

The Government of the United States shall provide and maintain fixed and floating aids to navigation in the Marshall Islands and the Federated States of Micronesia at least to the extent necessary for the exercise of its authority and responsibility under this Title.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in the Marshall Islands or the Federated States of Micronesia, are set forth in separate agreements which shall come into effect simultaneously with this Compact.

ARTICLE III

DEFENSE TREATIES AND INTERNATIONAL SECURITY AGREEMENTS

Section 331

Subject to the terms of this Compact and its related agreements, the Government of the United States, exclusively, shall assume and enjoy, as to the Marshall Islands and the Federated States of Micronesia, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as Administering Authority of the Trust Territory of the Pacific Islands as of the day preceding the effective date of this Compact; and

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in the Marshall Islands and the Federated States of Micronesia. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of the Marshall Islands or the Federated States of Micronesia.

ARTICLE IV

SERVICE IN ARMED FORCES OF THE UNITED STATES

Section 341

Any person entitled to the privileges set forth in Section 141 shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States so long as such person does not establish habitual residence in the United States, its territories or possessions.

Section 342

The Government of the United States shall have enrolled, at any one time, at least two qualified students, one each from the Marshall Islands and the Federated States of Micronesia, as may be nominated by their respective Governments, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195; and

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295b(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to Section 342(b) of this Compact.

ARTICLE V

GENERAL PROVISIONS

Section 351

(a) The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia shall establish two Joint Committees empowered to consider disputes under the implementation of this Title and its related agreements.

(b) The membership of each Joint Committee shall comprise selected senior officials of each of the two participating Governments. The senior United States military commander in the Pacific area shall be the senior United States member of each Joint Committee. For the meetings of each Joint Committee, each of the two participating Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, each Joint Committee shall meet semi-annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. A Joint Committee also shall meet promptly upon request of either of its members. Upon notification by the Government of the United States, the Joint Committees so notified shall meet promptly in a combined session to consider matters within the jurisdiction of more than one Joint Committee. Each Joint Committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree.

(d) Unresolved issues in each Joint Committee shall be referred to the Governments concerned for resolution, and the Government of the Marshall Islands or the Federated

States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under Title Three, the Government of the United States shall accord due respect to the authority and responsibility of the Governments of the Marshall Islands and the Federated States of Micronesia under Titles One, Two and Four and to their responsibility to assure the well-being of their peoples.

Section 353

(a) The Government of the United States shall not include any of the Governments of the Marshall Islands and the Federated States of Micronesia as named parties to a formal declaration of war, without their respective consent.

(b) Absent such consent, this Compact is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of the Marshall Islands or the Federated States of Micronesia, which arise out of armed conflict subsequent to the effective date of this Compact and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under Section 353(b)(1) shall be treated as if they were made by citizens of the United States.

Section 354

(a) Notwithstanding any other provision of this Compact, the provisions of this Title are binding from the effective date of this Compact for a period of fifteen years between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia and thereafter as mutually agreed or in accordance with Section 231, unless earlier terminated by mutual agreement pursuant to Section 441, or amended pursuant to Article III of Title Four.

(b) The Government of the United States recognizes, in view of the special relationship between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia, and in view of the existence of separate agreements with each of them pursuant to Sections 321 and 323, that, even if this Title should terminate, any attack on the Marshall Islands or the Federated States of Micronesia during the period in which such separate agreements are in effect, would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, the Government of the United States would take action to meet the danger to the United States and to the Marshall Islands and the Federated States of Micronesia in accordance with its constitutional processes.

TITLE FOUR

ARTICLE I

APPROVAL AND EFFECTIVE DATE

Section 411

This Compact shall come into effect upon mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the Government of the Marshall Islands or the Federated States of Micronesia and subsequent to completion of the following:

(a) Approval by the Government of the Marshall Islands or the Federated States of Micronesia in accordance with its constitutional processes;

(b) Conduct of the plebiscite referred to in Section 412; and

(c) Approval by the Government of the United States in accordance with its constitutional processes.

Section 412

A plebiscite shall be conducted in each of the Marshall Islands and the Federated States of Micronesia for the free and voluntary choice by the peoples of the Trust Territory of the Pacific Islands of their future political status through informed and democratic processes. The Marshall Islands and the Federated States of Micronesia shall each be considered a voting jurisdiction, and the plebiscite shall be conducted under fair and equitable standards in each voting jurisdiction. The Administering Authority of the Trust Territory of the Pacific Islands, after consultation with the Governments of the Marshall Islands and the Federated States of Micronesia, shall fix the date on which the plebiscite shall be called in each voting jurisdiction. The plebiscite shall be called jointly by the Administering Authority of the Trust Territory of the Pacific Islands and the other Signatory Government concerned. The results of the plebiscite in each voting jurisdiction shall be determined by a majority of the valid ballots cast in that voting jurisdiction.

ARTICLE II

CONFERENCE AND DISPUTE RESOLUTION

Section 421

The Government of the United States shall confer promptly at the request of the Government of the Marshall Islands or the Federated States of Micronesia and any of those Governments shall confer promptly at the request of the Government of the United States on matters relating to the provisions of this Compact or of its related agreements.

Section 422

In the event the Government of the United States, or the Government of the Marshall Islands or the Federated States of Micronesia, after conferring pursuant to Section 421, determines that there is a dispute and gives written notice thereof, the Governments which are parties to the dispute shall make a good faith effort to resolve the dispute among themselves.

Section 423

If a dispute between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia cannot be resolved within 90 days of written notification in the manner provided in Section 422, either party to the dispute may refer it to arbitration in accordance with Section 424.

Section 424

Should a dispute be referred to arbitration as provided for in Section 423, an Arbitration Board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An Arbitration Board shall consist of a Chairman and two other members, each of whom shall be a citizen of a party to the dispute. Each of the two Governments which is a party to the dispute shall appoint one member to the Arbitration Board. If either party to the dispute does not fulfill the appointment requirements of this Section within 30 days of referral of the dispute to arbitration pursuant to Section 423, its member on the Arbitration Board shall be selected from its own standing list by the other party to the dispute. Each Government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a Chairman within 15 days after selection of the other members of the Arbitration Board. Failing agreement on a Chairman, the Chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) The Arbitration Board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles I, II, III, IV and V of Title One, Title Two, Title Four and their related agreements.

(c) Each member of the Arbitration Board shall have one vote. Each decision of the Arbitration Board shall be reached by majority vote.

(d) In determining any legal issue, the Arbitration Board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The Arbitration Board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact. Unless the parties provide otherwise by mutual agreement, the Arbitration Board shall endeavor to render its decision within 30 days after the conclusion of the arguments. The Arbitration Board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the Arbitration Board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the other party to the dispute.

ARTICLE III

AMENDMENT

Section 431

The provisions of this Compact may be amended as to the Governments of the Marshall Islands and the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement.

Section 432

The provisions of this Compact may be amended as to any one of the Governments of the Marshall Islands or the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement. The effect of any amendment made pursuant to this Section shall be restricted to the relationship between the Governments agreeing to such amendment, but the other Governments signatory to this Compact shall be notified promptly by the Government of the United States of any such amendment.

ARTICLE IV

TERMINATION

Section 441

This Compact may be terminated as to any one of the governments of the Marshall Islands or the Federated States of Micronesia and as to the Government of the United States by mutual agreement and subject to Section 451.

Section 442

This Compact may be terminated by the Government of the United States as to the Government of the Marshall Islands or the Federated States of Micronesia subject to Section 452, such termination to be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended.

Section 443.

This Compact shall be terminated, pursuant to their respective constitutional processes, by the Government of the

Marshall Islands or the Federated States of Micronesia subject to Section 453 if the people represented by such Government vote in a plebiscite to terminate. Such Government shall notify the Government of the United States of its intention to call such a plebiscite which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by such Government in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, such Government shall, upon certification of the results of the plebiscite, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

ARTICLE V

SURVIVABILITY

Section 451

Should termination occur pursuant to Section 441, economic assistance by the Government of the United States shall continue on mutually agreed terms.

Section 452

(a) Should termination occur pursuant to Section 442, the following provisions of this Compact shall remain in full force and effect until the fifteenth anniversary of the effective date of this Compact between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia and thereafter as mutually agreed:

(1) Article VI and Sections 172, 173, 176 and 177 of Title One;

(2) Article I and Section 233 of Title Two;

(3) Title Three; and

(4) Articles II, III, V and VI of Title Four.

(b) The Government of the United States shall also provide the Government as to which termination occurs pursuant to Section 442 with either the programs or services provided pursuant to Article II of Title Two at the time of termination, or their equivalent, as determined by the Government of the United States. Such assistance shall continue until the fifteenth anniversary of the effective date of this Compact, and thereafter as mutually agreed.

Section 453

(a) Should termination occur pursuant to Section 443, the following provisions of this Compact shall remain in full force and effect until the fifteenth anniversary of the effective date of this Compact between the Government of the United

States and the Government of the Marshall Islands or the Federated States of Micronesia and thereafter as mutually agreed:

(1) Article VI and Sections 172, 173, 176 and 177 of Title One;

(2) Title Three; and

(3) Article II, III, V and VI of Title Four.

(b) Upon receipt of notice of termination pursuant to Section 443, the Government of the United States and the Government so terminating shall promptly consult with regard to their future relationship. These consultations shall determine the level of economic assistance which the Government of the United States shall provide to the Government so terminating for the period ending on the fifteenth anniversary of the effective date of this Compact provided that the annual amounts specified in Sections 211, 212, 214, 215 and 216 shall continue without diminution. Such amounts, with the exception of those specified in Section 216, shall be adjusted according to the formula set forth in Section 217.

Section 454

Notwithstanding any other provision of this Compact:

(a) The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the peoples of the Marshall Islands and the Federated States of Micronesia; and

(b) The separate agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms which shall also determine the duration of Section 213.

ARTICLE VI

DEFINITION OF TERMS

Section 461

For the purpose of this Compact only and without prejudice to the views of the Government of the United States or the Government of the Marshall Islands or the Federated States of Micronesia as to the nature and extent of the jurisdiction under international law of any of them, the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the administrative districts of Kosrae, Yap, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, Section 1, in force on January 1, 1979. This term does not include the area of Palau or the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July

18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "The Marshall Islands" and "the Federated States of Micronesia" are used in a geographic sense and include the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States.

(d) "Government of the Marshall Islands" means the Government established and organized by the Constitution of the Marshall Islands including all the political subdivisions and entities comprising that Government.

"Government of the Federated States of Micronesia" means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

(e) The following terms shall be defined consistent with the 1976 Edition of the Radio Regulations of the International Telecommunications Union (ISBN 92-61-0081-5) as follows:

(1) "Radio Communications" means telecommunication by means of radio waves.

(2) "Station" means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at

one location for carrying on a radio communication service; each station shall be classified by the service in which it operates permanently or temporarily.

(3) "Broadcasting Service" means a radio communication service in which the transmissions are intended for direct reception by the general public, and which may include sound transmissions, television transmissions or other types of transmissions.

(4) "Broadcasting Station" means a station in the broadcasting service.

(f) "Frequency Assignment" means the same as 'Frequency Assignment' means in the 1976 Edition of the Radio Regulations of the International Telecommunications Union (ISBN 92-61-0081-5).

(g) "Habitual Residence" means a place of general abode or a principal, actual dwelling place of a continuing or lasting nature; provided, however, that this term shall not apply to the residence of any person who entered the United States for the purpose of full-time studies as long as such person maintains that status, or who has been physically present in the United States, the Marshall Islands or the Federated States of Micronesia for less than one year, or who is a dependent of a resident representative, as described in Section 152.

(h) For the purposes of Article IV of Title One of this Compact:

(1) "Actual Residence" means physical presence in the Marshall Islands or the Federated States of Micronesia during eighty-five percent of the period of residency required by Section 141(a)(3); and

(2) "Certificate of Actual Residence" means a certificate issued to a naturalized citizen by the Government which has naturalized him stating that the citizen has complied with the actual residence requirement of Section 141(a)(3).

(i) "Military Areas and Facilities" means those areas and facilities in the Marshall Islands or the Federated States of Micronesia reserved or acquired by the Government of the Marshall Islands or the Federated States of Micronesia for use by the Government of the United States, as set forth in the separate agreements referred to in Section 321.

(j) "Capital Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, adjusted by Section 217, which are to be obligated for:

(1) the construction or major repair of capital infrastructure; or

(2) public and private sector projects identified in the official overall economic development plan.

(k) "Current Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, adjusted by Section 217, which are to be obligated for recurring operational activities including infrastructure maintenance as identified in the annual budget justifications submitted yearly to the Government of the United States.

(l) "Official Overall Economic Development Plan" means the documented program of annual development which identifies the specific policy and project activities necessary to achieve a specified set of economic goals and objectives during the period of free association, consistent with the economic assistance authority in Title Two. Such a document should include an analysis of population trends, manpower requirements, social needs, gross national product estimates, resource utilization, infrastructure needs and expenditures, and the specific private sector projects required to develop the local economy of the Marshall Islands or the Federated States of Micronesia. Project identification should include initial cost estimates, with project purposes related to specific development goals and objectives.

(m) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(n) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia, as appropriate, shall conclude related agreements which shall come into effect and shall survive in accordance with their terms, as follows:

(a) Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 131 of the Compact of Free Association;

(b) Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 132 of the Compact of Free Association;

(c) Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association;

(d) Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association;

(e) Federal Programs and Services Agreement Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association;

(f) Agreement Concluded Pursuant to Section 234 of the Compact of Free Association;

(g) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association;

(h) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 227, 321 and 323 of the Compact of Free Association;

(i) Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association;

(j) Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association; and

(k) Agreement Between the Government of the Unites States and the Government of the Marshall Islands Regarding Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association.

Section 463

(a) Except as set forth in Section 463(b), any reference in this Compact to a provision of the United States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as such provision was in force on January 1, 1980.

(b) Any reference in Article VI of Title One and Sections 131, 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act or the Administrative Procedure Act constitutes the incorporation of the language of such provision into this Compact as such provision is in force on the effective date of this Compact or as it may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

ARTICLE VII

CONCLUDING PROVISIONS

Section 471

(a) The Government of the United States and the Governments of the Marshall Islands and the Federated States of

Micronesia agree that they have full authority under their respective Constitutions to enter into this Compact and its related agreements and to fulfill all of their respective responsibilities in accordance with the terms of this Compact and its related agreements. The Governments pledge that they are so committed.

(b) Each of the Governments of the United States, the Marshall Islands and the Federated States of Micronesia shall take all necessary steps, of a general or particular character, to ensure, not later than the effective date of this Compact, the conformity of its laws, regulations and administrative procedures with the provisions of this Compact.

(c) Without prejudice to the effects of this Compact under international law, this Compact has the force and effect of a statute under the laws of the United States.

Section 472

This Compact may be accepted, by signature or otherwise, by the Government of the United States, the Government of the Marshall Islands, and the Government of the Federated States of Micronesia. Each Government accepting this Compact shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Compact of Free Association which shall come into effect in accordance with its terms between the Government of the United States and each of the other Governments signatory of this Compact.

Done at Honolulu, Hawaii, this 1st day of October, One Thousand, Nine Hundred Eighty-Two

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA
AMBASSADOR FRED M. ZEDER, II
President's Personal Representative
for Micronesian Status Negotiations

Done at Honolulu, Hawaii, this 1st day of October, One Thousand, Nine Hundred Eighty-Two

FOR THE GOVERNMENT
OF
THE FEDERATED STATES OF MICRONESIA
HONORABLE ANDON L. AMARAICH
Chairman Commission on Future
Political Status and Transition

Done at Majuro, Marshall Islands, this 25th day of June, One Thousand, Nine Hundred Eighty-Three

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA
AMBASSADOR FRED M. ZEDER, II
President's Personal Representative

for Micronesian Status Negotiations

Done at Majuro, Marshall Islands, this 25th day of June, One Thousand, Nine Hundred Eighty-Three

FOR THE GOVERNMENT
OF
THE MARSHALL ISLANDS
PRESIDENT AMATA KABUA
President of the Republic
of the Marshall Islands

Sec. 2. (a) With respect to section 321 of the Compact of Free Association and its related agreements, the jurisdictional provisions set forth in subsection (b) of this section shall apply only to the citizens and nationals of the United States and aliens lawfully admitted to the United States for permanent residences who are in the Marshall Islands or the Federated States of Micronesia.

(b) The defense sites of the United States established in the Marshall Islands or the Federated States of Micronesia in accordance with the Compact of Free Association and its related agreements are within the special maritime and territorial jurisdiction of the United States as set forth in section 7, title 18, United States Code:

(i) Any person referred to in subsection (a) of this section who within or upon such defense sites is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State of Hawaii by the laws thereof, in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(ii) The United States District Court for the District of Hawaii shall have jurisdiction to try all criminal offenses against the United States, including the laws of the State of Hawaii made applicable to the defense sites in the Marshall Islands or the Federated States of Micronesia by virtue of subsection (b)(i) of this section, committed by any person referred to in subsection (a) of this section.

(iii) The United States District Court for the District of Hawaii may appoint one or more magistrates for the defense sites in the Marshall Islands. Such magistrates shall have the power and the status of magistrates appointed pursuant to chapter 43, title 28, United States Code: *Provided, however,* That such magistrates shall have the power to try persons accused of and sentence persons convicted of petty offenses, as defined in section 1(3), title 18, United States Code, including violations of regulations for the maintenance of peace, order, and health issued by the commanding officer on such defense sites, without being subject to the restrictions provided for in section 3401(b), title 18, United States Code.

SEC. 3. Upon the effective date of the Compact of Free Association, the laws of the United States generally applicable to the Trust Territory of the Pacific Islands shall continue to apply to the Republic of Palau and the Republic of Palau shall be eligible for such proportion of Federal assistance as it would otherwise have been eligible to receive under such laws prior to the effective date of the compact, as determined by the Government of the United States.

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The CHAIRMAN. Before turning to our first witness, I would recognize the distinguished Senator from Louisiana, who is not only the ranking member on this committee on the other side of the aisle, but also has a very strong and continuing commitment to these issues.

Senator Johnston.

STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator JOHNSTON. Thank you very much, Mr. Chairman.

Mr. Chairman, I have a written statement which I would like to submit for the record.

The CHAIRMAN. Without objection, it will be made a part of the record in full.

Senator JOHNSTON. I would just like to add two or three thoughts. First, Mr. Chairman, this is the beginning of the culmination of a very happy time, I think, after 14 years' work in which we have brought the peoples of Micronesia to self-government.

I think, frankly, it is an era in American history of which we can be very proud. I don't know of any nation that has ever committed so much money, time, and effort to an area as small with as few people as Micronesia, and spent as much of its time and substance in the name of democracy.

I think that has been done principally in the name of democracy and principally in the name of what this country stands for and believes in.

Self-interest, of course, is always of some concern, but principally it was through altruistic feelings, I think, that we did it.

I want to congratulate Ambassador Fred Zeder, President Nakayama, and President Kabua especially for being there at the switch when we're finally culminating this agreement.

I do have three concerns, Mr. Chairman, which I hope we can clear up and satisfy. First, we have certain commitments of continuing interest which we think can best be served through an administration at Interior, or at the Executive Office and specifically cannot be satisfied through an administration at the Department of State. I hope we can get that worked out satisfactorily.

Second, with respect to termination, we believe there should be a congressional role, that it should require an act of Congress before there be any change in termination. Third, in the same vein there should be congressional concurrence on modification. The compact could not be unilaterally modified on behalf of the United States by action of the Executive, but rather that it should, I believe, take congressional concurrence.

So having said that, Mr. Chairman, I again want to congratulate the parties involved and look forward to hearing their testimony.

[The prepared statement of Senator Johnston follows:]

OPENING STATEMENT
SENATOR JOHNSTON
May 24, 1984

Mr. Chairman, first let me commend you for scheduling a hearing so quickly on this historic document. Although the transmittal message on the Compact was only received some 6 weeks ago, I want the record to reflect the high priority you have given it despite the presence of many competing, difficult issues which we still have on our agenda this year.

The negotiations which led up to this document were begun over fourteen years ago. Indeed, we have been involved in this process during 12 of those years, when we both came to the Senate, and received our respective assignments on the Energy Committee. These negotiations have been painstaking, arduous and difficult, but I think the final result is one which reflects a truly open and democratic process. That the concepts contained herein were fully and openly discussed is shown in the high voter participation which the United Nations-observed plebiscites in both the FSM and the Republic of the Marshall Islands received. Clear majorities in the FSM (79%) in June 1983 and in the Marshalls 3 months later in September 1983 (58%) approved the Compact, results which were then ratified by substantial majorities in the respective legislative branches of these two governments. Careful deliberations were obviously given to the Compact and the process of ratification has involved consultations with as many as possible in a truly democratic fashion. I commend the governments, and particularly

President Nakayama and President Kabua who are here with us today, for the important role they played in this process and for the leadership they have both shown throughout the emergence of self-government and self-determination in Micronesia.

That we have gotten to where we are today is, I think, illustrative of the success the United States has had in administering the Trusteeship. In 1975, when this Committee considered S.J. Res. 107, a joint resolution approving the Mariana Islands Covenant, our beloved friend and colleague, Scoop Jackson, reminded us of the history of foreign control over the Marianas and Micronesia and stated then that "it is high time that these people had the opportunity of self-determination". If Scoop could be here today, I am sure he would say the same thing and that he would be proud, as I am, that the will of the peoples of the Marshall Islands and the Federated States have been allowed to be freely expressed for the first time in the over four hundred years of occupation and administration of these islands.

Although I am sure that not everyone here will agree in every detail, I want to underscore today the sound record I believe the U.S. has had - with the Congress' help and insistence - in administering the Trust Territory. Since 1947, when the Trusteeship was established, through U.S. efforts Micronesia has undergone a peaceful revolution from a war-ravaged state to one setting the stage for full development today. While there is no doubt that much remains to be done, and indeed the funding provided in the Compact over its 15 year period will help accomplish this, I believe when any objective observer looks back over the last 37 years the most striking fact is the lasting changes which have improved the lives of the people through education, health services and the like. Since 1961, the United States has committed over $1.2 billion to the peoples of the Trust Territory - an extraordinarily generous amount when one considers that the population of Micronesia is roughly 100,000. And since 1976, we have appropriated over $300 million to put in place the infrastructure needed to allow development in the future. This program, I might add, was developed as a result of a solid staff report prepared for this Committee. I would be hard-pressed to name any other nation anywhere in the world who has done as much as we have in helping any other trusteeship and I can certainly name no other nation who has agreed to provide such generous assistance after a trusteeship was ended. I believe this is proper and indeed I look forward to receiving testimony today on any needs which the Compact may not have addressed which the representatives from the FSM and the Marshalls may wish to bring to our attention.

I am also looking forward to hearing what the Administration witnesses will say on a number of issues of particular concern to me. I hope we can secure firm understandings on several matters which the text of the resolution and the section-by-section analysis address in only vague terms such as the effective date of each provision and what happens during any transition period, what role the Congress will play in any mutually-agreed upon modifications to the Compact as outlined in the amendment to Article III, §§ 431 and 432, and especially the outlined termination process outlined in the amendment to Article IV §§ 441, 442 and 443 and - most important - the precise organizational structure the Administration now contemplates for administering our future relationship.

I particularly want to stress my concern about the organizational framework, Mr. Chairman, because this is the key to our ability to provide the continued assistance which the FSM and the Marshalls need. As I understand the proposal before us, the Compact assumes that over the next fifteen years we will have a close relationship with both the FSM and the Marshalls. That is, the compact does not propose an abrupt end to our 37 year relationship. It does not propose that we will turn a deaf ear to special needs as they arise. It does not propose that we will never appropriate one dime more than is contained in this proposal if an unanticipated need arose.

As the Chairman well knows, many such special needs have arisen in the past when severe typhoon damage occurred as in the Marshalls in 1979, or in Truk in 1982 when a severe cholera epidemic broke out. Each time, the Congress responded swiftly and provided the special assistance needed. But to do this in the future, we must have a framework which will allow us to act responsively and expeditiously, a framework which will not pit the FSM and the Marshalls against every other nation of the world. We have spent 37 years nourishing a special relationship with these friends, and I think we should make sure that we have a special framework which will enable us to live up to our past promises and our future responsibilities while at the same time allowing the natural growth which comes with the Compact to occur. I can sympathize with the need to change the current framework, Mr. Chairman, but in my view relegating the Micronesians to a place in the back of the line of the many nations to whom we provide assistance, without any provision for special consideration based on 37 years of the trusteeship relationship we've had, is not only unwise but is also fundamentally unfair. At the least, it is unacceptable to me.

I will also seek a firm clarification from Administration witnesses as well as from the witnesses here today representing the Federated States and the Republic of the Marshall Islands on the meaning of the langauge in Article V § 452, how this will operate and what role if any the Administration contemplates for the Congress in determinations which may be made under this section in the future.

None of these are new issues and in fact, as the Chairman knows, on all of these issues we have worked closely with this and past Administrations to confect a precise formulation to accommodate the concerns I and others have. I still hope to support this Compact and urge the Administration today to answer fully, honestly and clearly the questions I have been raising for some 10 years so that these critically important issues can be put to rest.

The **Chairman**. Senator Hecht?

Senator **Hecht**. I have no comment, sir.

The **Chairman**. Our first witness this morning is Hon. Fred M. Zeder, the President's personal representative for Micronesian status negotiations.

Before you make your statement, we'll start on the high note and wait and see how the low notes are played later. You have certainly dedicated yourself to this work, and we appreciate the coordination and the consultation we have had over the months that it's taken. I'm sure that other members of the committee share that feeling as well.

Your entire statement will be placed in the record. I would invite you to introduce those who may be testifying with you and then proceed to highlight your statement in whatever way you would like.

Mr. Ambassador.

STATEMENT OF HON. FRED M. ZEDER II, THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS, ACCOMPANIED BY RICHARD MONTOYA, ASSISTANT SECRETARY, TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR; JAMES D. BERG, POLITICAL AND ECONOMIC OFFICER, OFFICE OF MICRONESIAN STATUS NEGOTIATIONS; WILLIAM BROWN, DEPUTY ASSISTANT SECRETARY, DEPARTMENT OF STATE; JAMES A. KELLY, DEPUTY ASSISTANT SECRETARY, DEPARTMENT OF DEFENSE; ROBERT SHANKS, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; COMDR. JACK DARBY, DEPUTY DIRECTOR, POLITICO-MILITARY AFFAIRS, OFFICE OF THE JOINT CHIEFS OF STAFF; AND DR. MAURICE KATZ, DEPUTY DIRECTOR, MILITARY APPLICATIONS, DEFENSE PROGRAMS, DEPARTMENT OF ENERGY

Mr. **Zeder**. Thank you, Mr. Chairman, and thank you for those kind words. It was a very cooperative effort that we received from this committee that made this possible, and I also appreciate your recognizing President Kabua and President Nakayama, who worked with us very closely in order for us to get where we are today.

I certainly appreciate this opportunity to appear before you and the committee on the subject of the Compact of Free Association which the administration has submitted for congressional enactment.

For the record, my name again is Fred Zeder, and I have served as the U.S. chief negotiator for the negotiations which have led to the Compact of Free Association since February 11, 1982.

My oral remarks will be limited to a summary of my prepared statement, which I understand will be printed in the record of this hearing.

I do appreciate also the opportunity to introduce the key administrative representatives that are present here today.

First we have Richard Montoya, who is the Assistant Secretary for Territorial and International Affairs of the Department of the Interior.

We have William Brown, Deputy Assistant Secretary for East Asia Pacific Affairs from the Department of State.

We have on my left James A. Kelly, Deputy Assistant Secretary, East Asia and Pacific Affairs, from the Department of Defense.

We have Robert Shanks here, Deputy Assistant Attorney General from the Department of Justice.

We have Comdr. Jack Darby of the U.S. Navy, Deputy Director for Politico-Military Affairs. He's with the Joint Chiefs of Staff.

We have Dr. Maury Katz, who is also here. He's Deputy Director for Military Applications, Defense Programs, Department of Energy.

We also have on my right James D. Berg, who is my Political and Economic Affairs Officer.

The negotiations between the Government of the United States and the peoples of the TTPI trace their origin to the first round of talks which commenced in Washington, DC, on September 30, 1969.

The commitment of the United States to the development of democratic institutions and self-government for the peoples of the TTPI and our success in supporting these objectives has been demonstrated in part by the fact that the final phases of these negotiations were conducted by representatives of the constitutional governments which have been established within the trust territory in recent years.

Direct approval of the compact by the peoples of the Marshall Islands and the Federated States of Micronesia in U.N.-observed plebiscites and by their Governments in accordance with their constitutional processes further indicates the degree of democratic self-determination that the United States has fostered in fulfillment of our trusteeship obligations and in accordance with our own national traditions.

The conclusion of the negotiations and the Compact of Free Association marks the culmination of the efforts of the Reagan administration, and every administration since 1969, to establish, on the basis of mutual agreement with the peoples of the Marshall Islands and the Federated States of Micronesia, the legal and political basis for their termination of the trusteeship agreement. Our goal is to establish this as soon as practical after congressional enactment of the compact.

The Compact of Free Association is a fair and equitable instrument, is fair to the peoples of the Freely Associated States of the Marshall Islands and the Federated States of Micronesia, and fully preserves U.S. interests in this area of the world.

We further believe that this compact reflects the aspirations and inspirations of the peoples of the Marshall Island and the Federated States of Micronesia; it enhances the prospects for economic growth and self-sufficiency in the Freely Associated States; it continues to build upon long-lasting bonds of friendship and cooperation between the United States and the peoples of the Marshall Islands and the Federated States of Micronesia; it contributes to the maintenance of a stable political and economic environment in the Pacific region; it fulfills our obligations under the trusteeship agreement with the U.N. Security Council; and, it ensures the protection of the U.S. strategic interests in the area.

In this latter connection, I want to emphasize that the compact recognizes continued full U.S. authority and responsibility for security and the defense matters in or relating to the Federated States of Micronesia and the Marshall Islands.

On March 30, 1984, President Reagan submitted the compact to Congress in the form of a draft resolution with his request that it be enacted expeditiously. You have introduced the Compact as Senate Joint Resolution 286.

The basic U.S. objective in negotiating the provisions of the compact was to provide sufficient support to the Freely Associated States to enable them to maintain essential governmental services and build a base for economic development.

The Freely Associated States must be able to continue to meet human needs and at the same time provide for Government participation in programs aimed at increasing the level of growth in economic development.

The United States has made a significant contribution in providing infrastructure of roads, airports, seaports, electrical systems, water and sewer systems through the capital improvement program. The total cost of these programs to date has been more than $325 million.

These projects will provide the basic infrastructure necessary to attract outside capital which in turn will allow the people of the Freely Associated States to have an opportunity for local economic growth.

Additionally, Federal domestic assistance programs have been extended to the trust territory in increasing numbers and amounts since the last 1960's. The value of these programs peaked at more than $33 million. And in sum, from all sources, the United States has provided in excess of $2 billion to support the TTPI since 1947.

For fiscal year 1985, the administration will request, upon approval by Congress of the compact, which will provide authorization, the amount of $295.5 million for the Marshall Islands and the Federated States of Micronesia.

This amount exceeds by some $150 million both the anticipated second-year request and the 15-year average annual amount of the compact economic assistance.

Certain one-time payments, including $150 million to establish a fund for the benefit of persons in the Marshall Islands affected by the U.S. Nuclear Weapon Testing Program, are included in this first-year of the funding.

The President's fiscal year 1985 budget identifies funding within ceiling for the Marshall Islands and the Federated States of Micronesia; $295.5 million is identified for compact funding. The Department of the Interior's request also includes amounts for the Marshall Islands and the Federated States of Micronesia. These amounts will not be necessary for fiscal year 1985 support in the event that the compact is not enacted and implemented by October 1, 1984. If the compact can be put into effect by that date, the administration would reduce its overall request by these amounts in light of Compact funding.

Upon approval by Congress, the compact will authorize the appropriation of grant assistance and annual requests for appropriations will be made by the administration to Congress for all the years of the compact funding.

As a part of this process, the Freely Associated States are required to report annually to the Congress and to the President on their use of the funds that they have previously received and upon their plans for the future use of these funds. The U.S. Government has the authority under the compact to audit fully the use of these funds.

The compact provides for the extension of certain Federal services to the Freely Associated States at levels equivalent to those available to the trust territory during the years prior to termination.

The services and related programs of the following agencies are included in the compact: the Weather Service, Federal Emergency Management Agency, Postal Service, Federal Aviation Administration, and the Civil Aeronautics Board.

In addition, recognizing the needs of the future Freely Associated States for assistance in health and education matters, the compact provides special block grant assistance. These are targeted to vital programs beyond the present financial and technical capability of the Freely Associated States.

The compact provides a mechanism for the possible extension by mutual agreement of Federal programs that may be needed in the future. The Congress may, from time to time, provide a law for the extension of such additional Federal programs. The Freely Associated States may also request that additional Federal programs be extended. Agreements to the extension of such programs would require U.S. congressional authorization.

The compact-grant assistance for current and capital accounts will be backed by a pledge of the full faith and credit of the United States. This pledge, which is also contained in the Northern Mariana Islands commonwealth Covenant, differentiates compact funding from general U.S. foreign assistance.

Inflation adjustment is provided by the terms of the compact and is pegged to an annual ceiling of 7 percent or two-third's of the gross national product implicit price deflator, whichever is less in the year in question.

The compact will also authorize the agencies and institutions of the Federal Government to provide technical assistance to the Freely Associated States.

The areas of financial management, maintenance, program design, and energy development have been identified by the Freely Associated States and the Federal Government as areas of the special need for technical assistance. And under the terms of the compact, the United States will be able to respond to these and other technical assistance needs on a case-by-case basis.

Mr. Chairman, I hope that this summary will provide you with an overview of some of the more important terms of the compact and the reasons we believe they satisfy both the U.S. interests and the objectives of the Freely Associated States.

I will be pleased to respond to any questions which you may have or supply any additional information.

[The prepared statement of Mr. Zeder follows:]

STATEMENT OF THE HONORABLE FRED M ZEDER II
Ambassador and President Reagan's Personal Representative
to conduct Negotiations on the Future Political Status
of the Trust Territory of the Pacific Islands

The negotiations between the Government of the United States and the peoples of the TTPI trace their origin to a first round of talks which commenced in Washington, D.C. on September 30, 1969. The overall question of the future status of the Trust Territory has been pending since the establishment of the trusteeship in 1947. Thus, the Compact of Free Association marks the culmination of a 37-year process through which the peoples of the TTPI have achieved ever-increasing levels of self-government and gradually begun to chart their own political destiny. This process has been consistent with United States objectives to establish stable democratic institutions in the TTPI and to carry out our obligation under the trusteeship to promote self-government for its peoples. The commitment of the United States to these objectives and our success in supporting their achievement is demonstrated in part by the fact that the final phases of the negotiations were conducted by representatives of the constitutional governments which have been established within the Trust Territory in recent years. Direct approval of the Compact by the peoples of the Federated States of Micronesia and the Republic of the Marshall Islands in United Nations-observed plebiscites and by their Governments in accordance with their constitutional processes further indicates the degree of democratic self-determination that the United States has fostered in fulfillment of our trusteeship obligations and along the lines of our own national traditions.

The conclusion of the negotiations and the Compact of Free Association also mark the culmination of the efforts of the Reagan Administration and every administration since 1969 to establish the legal and political basis for termination of the Trusteeship Agreement. Our goal is to accomplish this as soon as practicable after Congressional approval of the Compact.

This Administration has organized itself for the political status negotiations in the same fashion as its three predecessor Administrations. When the negotiations commenced during the first year of the Nixon Administration, the Department of the Interior, which since 1951 has had the responsibility for administration of civil government in the TTPI, took the lead role. This was a natural outgrowth of several then concurrent and preceding initiatives including the creation of the Congress of Micronesia in 1965 and Interior's assistance to that Congress and its commissions in their study of political status alternatives. In 1971, President Nixon instructed that negotiations would thenceforth be conducted by a special representative who would report to the President through the National Security Council. An interagency Office for Micronesian Status Negotiations was created and was staffed and supported by the Departments of State and Defense, with Interior providing administrative support. Policy formulation for the negotiations and oversight was provided by a policy level committee of the NSC composed of the undersecretaries of the Departments of State, Defense and

Interior and other departments whose organizational interests were affected. The President's Personal Representative, from the date of creation of that office to the present, derives his negotiating authority and limits from directives issued by the President personally on advice of the NSC and the Micronesia Interagency Group. This and previous administrations have found this organizational structure to be unusually flexible and durable, primarily due to its reliance on the active interest and involvement of several federal agencies.

The Compact of Free Association is fair and equitable to the peoples of the future freely associated states of the Marshall Islands and the Federated States of Micronesia and fully preserves United States interests in this area of the world. We further believe that this Compact:

-- Reflects the aspirations and interests of the peoples of the Marshall Islands and the Federated States of Micronesia;

-- Enhances the prospects for economic growth and self-sufficiency in the freely associated states;

-- Insures the protection of U.S. strategic interests;

-- Fulfills our obligations under the Trusteeship Agreement with the United Nations Security Council;

-- Continues and builds upon long-lasting bonds of friendship and cooperation between the United States and the peoples of the Marshall Islands and the Federated States of Micronesia; and

-- Contributes to the maintenance of a stable political and economic environment in the Pacific region.

As you are aware, the Compact of Free Association represents the second step in the negotiations with the peoples of the Trust Territory. The negotiations between the United States and the Northern Mariana Islands which commenced in 1972 culminated in the signing of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America on February 15, 1975. The Covenant was subsequently approved by the Northern Mariana Islands District Legislature and by the people of the Northern Mariana Islands. The United States Congress approved the Covenant by joint resolution, and it was enacted into law on March 24, 1976. Thereafter, the United States concurred, as was required in the Covenant, that The Constitution of the Northern Mariana Islands and the Covenant came into effect on January 9, 1978, though certain provisions of the Convenant will become fully operational only upon termination of the Trusteeship. Until the Trusteeship Agreement is terminated, however, the Commonwealth of the Northern Mariana Islands remains a part of the Trust Territory of the Pacific Islands subject to the provisions of the Trusteeship Agreement, although administered by its own elected government separately from the rest of the Trust Territory. Upon termination of the Trusteeship United States sovereignty will extend to the Northern Mariana Islands.

The third and final step in the negotiations with the peoples of the Trust Territory will be the approval of an arrangement for the future political status of Palau, the remaining political jurisdiction of the Trust Territory. Representatives of Palau have participated in the political status negotiations with their colleagues from the Marshall Islands and the Federated States of Micronesia since 1969. On August 26, 1982, I signed the Compact of Free Association with Palau's chief negotiator, Ambassador Lazarus Salii. On February 10, 1983, in a United Nations-observed plebiscite, the people of Palau approved free association with the United States, as set forth in the Compact of Free Association by a margin of 62.1%. In that plebiscite, the people of Palau also voted on a referendum question which would have reconciled the provisions of Section 3 of Article II of the Palau constitution with certain of the defense and security provisions of the Compact. Reconiliation under the terms of the Palau constitution required approval of the question by not less than 75% of those voting, but this requirement was not met by the 52.3% approval margin on the referendum question. These results, and their interpretation by the Palau Supreme Court, have prevented the Government of Palau from approving the Compact in accordance with its constitutional processes.

The Administration is continuing its discussions with Palau and we have stated our willingness to continue to explore methods for the effective legal and political reconciliation of the Compact and the Palau Constitution as well as our traditional willingness to explore different future political status alternatives, including United States territorial status or independence on mutually acceptable terms. In the meantime, the Administration is requesting Congress to approve the Compact for the Marshall Islands and the Federated States of Micronesia now, in advance of completion of the Palau negotiations, in the same way it approved the Northern Mariana Islands Commonwealth Covenant in advance of completion of negotiations with the other Trust Territory districts. This will elevate all completed future political status agreements to the status of United States law and move us closer to our goal of termination of the Trusteeship Agreement.

The negotiations for the Compact of Free Association were begun following a 1971 American-Micronesian agreement to proceed with discussions based on four fundamental principles which were to define the bounds of the new relationship. In brief, the Compact envisions the termination by the United States of its role as Administering Authority over the TTPI. It recognizes that the freely associated state governments will enjoy authority and responsibility over their internal and foreign affairs. This foreign affairs and domestic authority will be limited, however, by the United States' retention of full authority and responsibility for security and defense matters. The governments of the freely associated states will consult with the United States in the exercise of their foreign affairs authority and will refrain from actions which the United States determines to be incompatible with its security and defense authority. The United States will provide grant aid assistance and will continue to make available certain domestic services, such as weather forecasting, aviation safety and postal delivery. The United States and each of the freely associated states will have the power to terminate the political relationship unilaterally after a plebiscite similar to the one required for the approval for the association. In the case of termination before the fifteenth anniversary of the Compact's effective date, United States authority for defense and security matters and United States economic assistance will continue for their original fifteen year terms.

The issues addressed in the Compact can best be analyzed in light of the historical, political and legal setting in which the negotiations took place. In this analysis, I will also identify and discuss the development of United States negotiating objectives.

The Strategic Trust

The Trust Territory of the Pacific Islands is the only remaining trusteeship of the eleven originally created by the

United Nations. The TTPI is the only area to have been designated as a strategic trusteeship pursuant to Article 82 of the United Nations Charter. As administrator of a strategic trust, the United States is permitted great latitude in defense and security matters and is responsible to the Security Council rather than to the General Assembly, which exercised the United Nations authority over the other ten trusteeships.

The TTPI was established from the former Japanese-mandated islands by the Trusteeship Agreement, approved by the United Nations Security Council on April 2, 1947, and by the United States on July 18, 1947 (61 STAT. 397). The Trusteeship Agreement itself was formulated in furtherance of the principles expressed in the Atlantic Charter (1941), the Cairo Declaration (1943) and the United Nations Charter (1945). President Truman's acceptance, on the basis of specific Congressional authorization, of the Strategic Trusteeship Agreement constituted acceptance by the United States of the United Nations trusteeship system as the international legal regime for the disposition of areas detached from enemies of the World War II allies and of those areas formerly under League of Nations mandate. Consistent with United States' rejection of territorial aggrandizement as the result of war, the United States acknowledged that the designation of a nation as administering authority of a trusteeship precluded any claim of sovereignty over the trusteeship area. In the specific case of the TTPI, special provision was made in the U.N. Charter and in the Trusteeship Agreement to ensure that the security interests of the United States in the islands, including the strategic U.S. military position which was established at the end of the conflict, would be preserved and safeguarded. In addition, the Trusteeship Agreement enabled the United States to apply its laws to the TTPI. These fundamental and controlling legal principles of trusteeship authority and administration are clearly established in the legislative history of the Trusteeship Agreement, the record of the foreign policy process leading to its approval, the records of the Congress and the President in the administration of the trusteeship and in numerous Federal judicial decisions interpreting the United Nations agreement.

The obligations of the United States Government, as Administering Authority for the TTPI, are set forth in the Trusteeship Agreement. In accordance with Articles 76(a) and 84 of the Charter, the Trusteeship Agreement recognizes that the Trust Territory has a role in the maintenance of international peace and security. To implement this goal, Article 5 of the Trusteeship Agreement allows the United States to establish military bases and to station armed forces within the territory. Additionally, the United States has the right, pursuant to Article 13 of the Trusteeship Agreement, to close off any part of the territory for security reasons. The United States, on a few occasions in the 1940's and 1950's, has exercised those rights. We now maintain control, pursuant also to lease and use agreements, over all air and sea movement into and out of Kwajalein Atoll in the Marshall Islands where test facilities for our Pacific missile range are situated.

The Trusteeship Agreement requires that the United States exercise its authority under the United Nations Charter and the Agreement in a manner consistent with the obligations assumed therein by the United States, and sets forth four major goals for the United States to pursue in the Trust Territory:

-- To foster the development of political institutions in the territory toward self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and the freely expressed wishes of the people concerned;

-- To promote the economic advancement and self-sufficiency of the inhabitants;

-- To promote the social advancement of the inhabitants and, to this end, to protect their rights and fundamental freedoms; and

-- To promote their educational advancement.

The language of the Trusteeship Agreement thus indicates that the strategic trust was envisioned as a transitional system. The Trusteeship Agreement, in conjunction with the Charter, establishes as an objective of the Trusteeship arrangement self-government or independence. Clearly, however, both the transitional process and its result must accommodate the other basic objectives and requirements of the Trusteeship, including international peace and security.

To this end, President Reagan, in his October 3, 1981 statement to the people of the Trust Territory, established that the United States intended to preserve a close association with them. He stated that our goal was to complete negotiation of the subsidiary agreements of the Compact of Free Association because his Administration had thoroughly reviewed the Compact and endorsed free association as its preferred future political status alternative. The President also committed his Administration to the termination of the trusteeship as soon as possible on the basis of an approved Compact of Free Association.

The Trust Territory: Population, Geography, History

The Trust Territory of the Pacific Islands has an estimated population of about 136,500 people, scattered among 2,203 islands and islets in three major archipelagos: the Carolines, the Marshalls and the Marianas.

The use of the term "Micronesia", which has been generally used as synonymous with the area encompassed by the trusteeship, has prompted an assumption that a homogeneous Micronesian people exist. Throughout most of the period in which they were subject to colonial domination, the islands were administered separately by various nations, and the first political association of the various Trust Territory peoples occurred only in 1965 with the creation by the United States of the Congress of Micronesia. The islands of the Trust Territory are scattered over three million square miles of the North Pacific Ocean to the east of the Philippines and to the southwest of Hawaii, an area slightly larger than the continental United States. All these many small, individual islands and atolls constitute a land mass of only about 700 square miles. All the islands could easily fit into the Chesapeake Bay; yet the Carolines and Marshalls are scattered over an area greater than the distance from Seattle to Boston. The Marianas stretch northward over a distance equal to that from Atlanta to Chicago.

Political Development in the TTPI

In spite of their relative isolation, the peoples of the Trust Territory have shared in the spirit of self-determination which has captured the imagination of the Pacific as well as the rest of the world. Nationalism became institutionalized in the Congress of Micronesia. Elected leaders from all parts of the Trust Territory joined in their own councils to discuss common problems and explore the concept of political unity. However, important factors of geography, history and culture posed the dilemma of how to reconcile this nationalism with the traditional patterns of Pacific island identity which derive from one island rather than groups of islands. During this period the United

States repeatedly stated its view in favor of political unity for reasons of administrative logic and increased capacity for self-government.

By 1977, after 30 years of administrative unity, a cohesive nationalism strong enough to unite the disparate island groupings had not developed. The United States recognized the desires of Palau, the Marshall Islands and the Federated States of Micronesia to determine their own future, as it had previously recognized the desire of the people of the Northern Marianas to join the United States in a commonwealth status separate from the other districts. The determination not to force unity on the peoples of the Trust Territory was the outgrowth of U.S. experience during more than a decade of negotiations. It was founded upon the awareness that conformity with the freely expressed wishes of the people concerned is the critical element in determining the post-trusteeship status of the territory. In accepting this conclusion, the United States balanced the need to respect the expressed will of the people against the unavoidable economic and social limitations that will be faced by tiny populations in a large world. The final political decision of Palau, the Marshall Islands and the Federated States of Micronesia to separate from one another came in a U.N.-observed constitutional vote on July 12, 1978. As a result, the Compact creates separate bilateral relationships between the United States and each of the individual freely associated states.

The Negotiations 1965-1969

After its creation in 1965, the Congress of Micronesia established the Future Political Status Commission which was designated to investigate and report on various potential future political arrangements. The Commission submitted two reports to the Congress of Micronesia: an interim report in 1968 and a final one in 1969. These reports canvassed the various status alternatives and recommended a self-governing Micronesia in free association with the United States. The report summarily dismissed association with Japan as being neither advantageous nor practical and recommended independence as an alternative only if free association with the United States should not be possible. The United States was thus confronted with the task of reconciling traditional United States views in favor of self-government for the Trust Territory with its firm conviction that the strategic importance of the area required the long term retention of United States defense and security authority in order to maintain international peace and security.

The Commission recognized as well the mutual benefit inherent in a close security relationship with the United States, and was willing to make such an arrangement an integral part of eventual status negotiations.

With the exception of the Northern Mariana Islands, the Micronesian leadership rejected the option of commonwealth or territorial status which was offered by the U.S. negotiators in 1969. While recognizing the opportunity for the enhanced standard of living that a commonwealth status would eventually bring, the Micronesian spokesmen stated their belief that the disadvantages were greater. Their report recognized that, as a United States territory, Micronesia would lose control of its own affairs and be subject to United States taxes, that the U.S. would have eminent domain authority and that Micronesians would have fewer opportunities to hold key positions in their government. Some felt that Americanization would diminish the prospect of preserving Micronesian cultures.

In April 1969, the Political Status Commission proposed the United States and Micronesia enter into a free association relationship based on the following principles:

1. That sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government.

2. That the people of Micronesia possess the right of self-determination and may, therefore, choose independence or self-government in free association with any nation or organization of nations.

3. That the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or government plan at any time.

4. That free association should be in the form of a revocable compact, unilaterally terminable by either party.

The United States, increasingly desirous of replacing the trusteeship with a mutually agreed relationship, agreed to negotiate a form of "free association" with the Micronesians.

The Negotiations 1969-1976: The First Draft Compact

Following the first formal negotiating round in Washington, D.C. in September of 1969, the Micronesian negotiators rejected a U.S. offer of territorial status on the grounds that United States eminent domain authority and control over Micronesian internal affairs was unacceptable. Similarly, the Micronesian negotiators rejected a United States offer of commonwealth status during Round II in 1970. The members of the Micronesian negotiating team from the Northern Mariana Islands did not participate in these rejections. Finally, during Round III in 1971 at Hanna, Maui, negotiators agreed on a framework for free association which envisioned that the United States would retain foreign affairs and defense authority, Micronesia would be internally self-governing and that United States domestic laws would apply only upon Micronesian agreement.

During Round IV, held in 1972 in Koror, Palau, social, political and economic divisions among the islands surfaced. As early as 1951, the Northern Mariana Islands, geographically, politically and culturally so close to Guam, had publicly expressed its discontent with the "accident of history" which had joined them with the Carolines and Marshalls after the Spanish-American War. The Mariana Islands expressed their desire for a permanent relationship with the United States which had been a matter of public record since the end of World War II.

When it became clear that the Northern Mariana Islands did not wish to enter into the same kind of relationship with the United States as the rest of Micronesia, the United States agreed, in 1972, to enter into separate political status negotiations with the Northern Mariana Islands. These negotiations culminated in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America which became P.L. 94-241 on March 24, 1976.

During this period, the United States continued to negotiate with the remaining Trust Territory districts of Palau, Yap, Truk, Ponape, Kosrae; and the Marshall Islands. In May of 1976, the Micronesian Joint Committee on Future Status and Ambassador F. Haydn Williams, representing the United States, initialed a draft compact which left only one major area for further resolution: the control of marine resources. The parties recognized Micronesia's great and legitimate interest in preserving and protecting its ocean resources for the full economic benefit of the people of Micronesia. They also recognized, however, that Law of the Sea matters had global significance and that the United States had worldwide interests which needed to be addressed.

Immediately after this initialing, a newly-reorganized Micronesian negotiating body, the Commission on Future Political Status and Transition (CFPST), was formed by the Congress of Micronesia and replaced the Joint Committee on Future Status.

The new Commission disavowed the initialed draft Compact, and from mid-1976 until late 1977 no negotiations took place due to the unresolved marine resources issue, effective Marshallese and Palauan non-participation in the CFPST, and the change in U.S. administrations.

The Negotiations 1977 - 1980

In an effort to resume the negotiations, the Carter Administration invited the leadership of the Congress of Micronesia and the speakers of each of the six district legislatures to a conference in Honolulu on May 18-21, 1977. During this conference, a structure for continuation of the negotiations was established and two important United States policy decisions were introduced.

First, the United States announced that it favored the immediate resumption of formal sustained negotiations having as their goal the termination of the Trusteeship by 1981. In this connection, the United States specifically stated that any future status options, including independence, could be considered during the negotiations as the Micronesian people desired. Second, the United States, while steadfastly maintaining its belief that there was real value in retaining some form of unity among the districts of Micronesia, recognized that the Micronesians themselves would have to make the fundamental decision concerning representation in the negotiations.

The Marshall Islands and Palau had long questioned whether their long-range goals would be furthered by unity with the central Carolines. Since the time in 1965 when all of the Micronesians had first elected representatives to the Congress of Micronesia, elements in the Marshalls and Palau began to argue that while each enjoys a larger revenue base than central Caroline districts, the federal structure of the Congress of Micronesia could force them to divert their tax revenues into the more populous central districts. In March 1974, the Marshall Islands District Legislature, the Nitijela, adopted a resolution informing the United Nations that it was unwilling to be a part of greater United Micronesia upon termination of the Trusteeship Agreement and that the Marshalls intended to initiate separate negotiations with the United States. The Micronesian elections of November 1974 resulted in a victory for pro-separation elements in the Marshalls and Palau.

In July, 1977, agreement was reached on a U.S. proposal for a two-tiered framework for the negotiation. The first, or multilateral, tier was designed to focus on those aspects of the relationship with the United States common to all six districts. The second, or bilateral, tier would address any matters of a specific nature unique to each district. The districts of Kosrae, Yap, Ponape and Truk decided that the Congress of Micronesia, through the CFPST, should represent them in all aspects of the negotiations. Palau and the Marshall Islands, on the other hand, each specified representation in both tiers of the negotiations by their own locally formed political status commissions. It was also decided that the subject of the renewed negotiations would be free association.

The first round of renewed formal negotiations was held October 24-27, 1977, at Molokai, Hawaii and was followed by meetings in early 1978 of the heads of delegations in San Diego, California and in Hilo, Hawaii. All three of these sessions were conducted within the agreed two-tiered format.

The Molokai meeting focussed on unfinished business from previous negotiations. The 1976 draft Compact did not include provisions, as first proposed by the Micronesian political status commission in April 1969, for free association to be in the form of a revocable compact, terminable unilaterally at any time by either party. As mentioned earlier, the 1976 draft Compact was initialed without agreement on the issue of how the Micronesians could be responsible for their foreign affairs relating to marine resources. However, on the issue of unity versus fragmentation, the political status commissions representing the Marshall Islands, Palau and the central Carolines issued a joint statement agreeing that there should be an all-Micronesian entity in the post-termination period.

Following the Molokai meeting, and a January, 1978 meeting, agreement was reached on eight basic principles of free association during a meeting at Hilo, Hawaii in April of 1978. The "Hilo Principles" represented important progress in that the U.S. and the Trust Territory delegations were able to identify and preserve their most essential interests. Micronesian capacity to conduct foreign affairs was recognized in the context of an obligation to consult with the United States and of a Micronesian agreement to refrain from actions which the United States found to be incompatible with its security and defense authority. The ability of any party to the Compact to terminate it unilaterally at any time was recognized with the proviso that United States defense and security authority and United States economic assistance would continue, unaffected, for their initial terms.

On July 12, 1978, a referendum was held on the proposed FSM Constitution. The Constitution was rejected in Palau and the arshalls district, but ratified in the four central Caroline districts of Kosrae, Yap, Ponape and Truk. Constitutional elections were held on March 27, 1979 in the four central Caroline districts for the first Congress of the Federated States of Micronesia and resulted in a 14-member congress and the election of Tosiwo Nakayama as the first President. The new Congress began its first session on May 10, 1979.

The Marshall Islands approved its constitution in a referendum on March 1, 1979 and on May 1, 1979, inaugurated a parliamentary constitutional government headed by President Amata Kabua.

The Palau draft constitution was submitted to a U.N.-observed referendum on July 9, 1979, and was approved by 92% of those voting. Palau, however, was engaged in internal political debate and the Palau Legislature, believing the restrictive hazardous materials provisions of the draft Palau constitution to be incompatible with the Palauan Constitutional Convention's enabling act, which required conformity with the Hilo Principles, voided the results of the referendum. It then scheduled a second referendum for October 23, 1979, to consider an amended constitution, but that document was defeated. In April of 1980 the High Commissioner approved a Palau Public Law which provided a timetable for the installation of a government under the original constitution. Under the terms of this bill, the Palau Constitution took effect on January 1, 1981 with the inauguration of a new government headed by President Haruo I. Remeliik. The U.S. position, articulated on April 30, 1979, with respect to the draft Palau Constitution was that it contained incompatibilities with the Hilo Principles and the draft Compact. The United

States, however, stated that it was for the Palauans to decide whether and how to reconcile the constitution and the Hilo Principles of free association.

While progress was being made on the internal constitutions of Palau, the Marshall Islands and the Federated States of Micronesia, the status negotiators met to develop the draft Compact. On January 14, 1980, Ambassador Peter R. Rosenblatt, for the Government of the United States, and the representatives of the Government of the Marshall Islands initialed the Compact of Free Association. The Compact was reinitialed by the Governments of the United States and the Marshall Islands, due to mutually agreed changes which had been made, and initialed by the Government of the Federated States of Micronesia on October 31, 1980. The Government of Palau initialed the Compact on November 17, 1980.

The Negotiations - 1981 to Conclusion

Less than a month after the administration of President Reagan assumed office, it began a comprehensive review of policy toward the Trust Territory. This policy review sought to identify U.S. interests in Micronesia that had to be secured in any negotiations leading to termination of the Trusteeship Agreement, to determine whether U.S. interests were in fact served through termination of the Trusteeship Agreement, and to assess the adequacy of the documents, specifically the Compact of Free

Association, which had been negotiated and initialed but not signed. In October of 1981, this Administration, at a major conference in Maui, Hawaii, announced its goal of trusteeship termination at the earliest possible date in favor of a mutually agreed relationship of free association with Palau, the Marshall Islands and the Federated States of Micronesia. The Administration also affirmed its support for the initialed Compact and its desire that the Compact be approved by the peoples and governments of Palau, the Marshall Islands and the Federated States of Micronesia and by the United States Congress upon completion of negotiation of the agreements subsidiary to the Compact.

Negotiations then resumed and certain revisions to the initialed Compact were made in order to accommodate the completion of the related agreements. The thirteen years of negotiations were concluded with the signature of the Compact and its related documents by the United States and the Marshall Islands on May 30, 1982; Palau on August 26, 1982; and the Federated States of Micronesia on October 1, 1982. Due to subsequent revisions and the conclusion of an additional subsidiary agreement, the United States and the Marshall Islands signed the Compact and all of its subsidiary agreements again on June 25, 1983.

Objectives of the Negotiations

In order to meet the test of time, it is necessary for an instrument as important as the Compact of Free Association to fully meet the basic policy objectives of each of its signatories. The Administration believes that the negotiating process has accomplished just such a result in the American-Micronesian context.

From the Micronesian Perspective

During the negotiations the United States remained constant in its concern that Micronesian objectives including their cultural, human and economic needs be met in the overall context of a mutually acceptable agreement. We and the Micronesians believe this has been accomplished.

Briefly, for the freely associated states, the most important single element of the Compact is that it recognizes the sovereignty of their peoples and their right to self-determination and self-government. After World War II, the United States deliberately did not assert sovereignty over the Trust Territory and instead placed the territory in the U.N. trusteeship system, which contained an obligation to prepare the area for self-government or independence. Rejecting any aggrandizement, territorial or otherwise, as a result of the war, we stated that the interests of the inhabitants of Micronesia should be paramount. The Compact flows smoothly from this attitude of mutual respect and understanding. The freely associated states will have full authority to establish their own citizenships, implement and change their own constitutions, elect their own political and governmental leaders, and will exercise full rather than partial responsibility and authority in the management of their affairs - save only in defense and security matters.

A noteworthy element of free association will be the ability of the freely associated governments to conduct their own foreign relations. In exercising this foreign affairs authority, the freely associated state governments have agreed to consult with the United States and to refrain from those actions which, in our view, impinge on our defense and security responsibilities.

Another important Micronesian objective achieved in the Compact is that it assured a significant level of U.S. Government economic assistance to each of the freely associated governments or the first fifteen years of the relationship. Whatever the effectiveness of our past efforts to establish a free market economy and to foster economic development, it is incontestable that in the early years, the new freely associated states will require American assistance.

From the United States Perspective

Fifteen years ago, the U.S. entered into the political status negotiations with the following general goals:

-- To stimulate the development of long-term growth through the creation of a stable political framework in this vast area of the Central Pacific;

-- To terminate the Trusteeship and maintain the close and friendly relationships which have developed during the period of United States administration; and

-- To protect United States security interests in the area.

These goals have remained constant and, in the view of the Administration, have been achieved in the Compact negotiations.

Political Objectives:

In seeking to maintain a close and friendly relationship, the U.S. addressed the need to fashion a future relationship which met our needs and would be acceptable to the Micronesian people and one which would survive any potential political instability in the area. Free association as defined in the Compact fulfills these goals. It has been approved in U.N.-observed plebiscites and through the individual constitutional rocesses of the freely associated state governments. By choosing free association, the Micronesians have not foreclosed the option of modifing this status as conditions warrant. They could, for example, elect a closer and more permanent relationship with the U.S. or they could seek a more independent relationship.

A second political objective of the U.S. has been to ensure that the participation of the freely associated states in the international community occurs in a fashion not harmful to overall U.S. foreign policy and national security objectives. The Compact provides that the freely associated states, in the exercise of the foreign affairs capacity, will consult with the United States and will not take actions which, after consultation, the United States determines to be incompatable with its security requirements. This commitment by the Micronesians, which distinguishes them from the status of independent states, accomplishes this central U.S. political objective. Moreover, the free association relationship constitutes an overall political framework through which specific U.S. foreign policy objectives can be met.

We must also view the impact of the political status negotiations in the broader regional context to determine how they affect our regional political objectives. Concurrent with the political status negotiations, the U.S. relationship with the established as well as newly independent nations of the South Pacific has been undergoing a dramatic change. New nations such as Kiribati, Tuvalu, the Solomon Islands and Vanuatu have emerged in the last few years. Over the last six years, the U.S. has moved to increase its official representation in the newly emerging island nations and strengthen its long-established ties with Australia, New Zealand, the Philippines and Singapore. The U.S.

has increased its aid to the new nations and provided for greater U.S. participation in regional activities and organizations. The goodwill and friendship of the South Pacific states is important to U.S. policy objectives in the entire Pacific area. The continuation of the trusteeship has long been a political liability in our dealings with the South Pacific nations which favor its termination and will welcome the Micronesians as legitimate participants in the affairs of their region.

Economic Objectives

Our basic objective as concerns economic assistance is to provide sufficient support to the freely associated states to enable them to continue to meet human needs and to provide for an increasing level of economic development. Our effort has been to design a U.S. assistance package which, through the use of declining annual levels of U.S. funding coordinated with national development plans, will create incentives for and support economic development which will reduce the need by the freely associated states for additional U.S. assistance after the first fifteen years of the relationship.

Before discussing the details of the assistance provisions of the Compact, let me briefly address the present economic situation of the Trust Territory. Unfortunately, the TTPI suffers from the classic problems of an underdeveloped area. Economic development is seriously handicapped by limited natural resources, by geographically disadvantaged and widely dispersed small islands, by a lack of an entrepreneural activity, and a growing and very young population. Over the past 15 years, very large and expensive government bureaucracy has developed. Almost ninety percent of the domestic economy of the future freely associated states is directly or indirectly dependent on U.S. assistance, largely to finance government salaries and expenses. Private sector initiatives have seldom succeeded in this atmosphere.

Federal domestic assistance programs, many of these unfortunately not responsive to the unique needs of the Trust Territory, were extended to the Trust Territory in increasing amounts during the late 1970's. Peaking in value in 1979 at more than $30 million, the effect of these programs has been to exaggerate the dependence of the Micronesians on the United States to an unprecedented degree and to further depress an already almost non-existent productive economy and to remove incentives for free enterprise.

On the other hand, the U.S. has laid the framework for more rapid growth by providing an infrastructure of roads, airports, seaports, electrical systems, water and sewer systems through the Capital Improvement Program (CIP). This program will be fully funded if Congress acts favorably on the President's FY 1985 budget request. The total cost of this program to date has been over $200 million. These projects will provide the basic infrastructure necessary to attract outside capital which in turn will allow the people of the Freely Associated States to have opportunities for local economic growth.

The policy decisions which the United States took in the Compact negotiations with regard to economic assistance were based on our conclusions with respect to this past record and to the type of support -- cash grants rather than Federal programs -- as well as the level and term of such support. The following considerations were taken into account:

First, the rising expectations of the Micronesian peoples and the concomitant present underdevelopment;

Second, the inability of economic development to progress without significant outside assistance in the near term;

Third, the continued economic dependence on the United States is not in the U.S. interest since it has led and will lead to friction in the political relationship; and

Fourth, economic development is the only fair route to follow to eventually reduce the level of U.S. expenditures without in any way jeopardizing the ability of the Micronesian governments to meet local human needs.

In structuring the financial components of the Compact, the United States emphasized grant assistance to the freely associated states for governmental operations and economic development. The Compact requires that these funds be spent in conformity with the objectives of National Development Plans.

The Compact specifies the amounts set forth in the table attached to the Adminsitration's submission of the Compact.

Inflation adjustment is provided by the terms of the Compact and is limited to an annual ceiling of 7% or two-thirds of the U.S. Gross National Product Implicit Price Deflator, whichever is less in the year in question. The freely associated states will be required to allocate not less than 40% of their grant funds to economic development in accordance with the development plans which they will prepare and submit for U.S. concurrence. Finally, the U.S. will provide $5.4 million annually for the special categories of maritime zone surveillance and enforcement (with a one-time $1.3 million grant for start-up costs), scholarships in U.S.-accredited universities and medical referrals. The division of this funding between the Marshall Islands and the Federated States of Micronesia must be determined by them.

While the Compact, upon approval by Congress, will authorize the specified amounts of grant assistance, annual requests for appropriations will still have to be made to Congress. In addition, each freely associated state is required to report annually to Congress on the use of its funds and the U.S. will have the authority to audit these uses.

The Compact provides for the extension of limited Federal programs to Micronesia at the levels equivalent to those available to the Trust Territory during the year prior to termination. The services and related programs of the following agencies have been included in the Compact:

- Weather Service;
- Federal Emergency Management Agency;
- Postal Service;
- Federal Aviation Administration; and
- Civil Aeronautics Board.

In addition, recognizing the Micronesians' need for assistance in health and education matters, we have offered limited assistance in these areas, restricted to programs which are vital and which are beyond the capability of the freely associated states to support from their own resources. Finally, the Compact provides that Congress may, from time to time, provide for the extension of additional Federal programs to the Marshall Islands or the Federated States of Micronesia, if they agree.

On balance, the economic assistance provisions of the Compact should insure the maintenance of financially viable governments, reduce annual U.S. expenditures in the area over time and provide impetus for economic development.

Security and Defense Objectives:

In the establishment of the trusteeship, the United Nations recognized the special United States role in this vast Pacific area in the maintenance of international peace and security. The importance we have placed on the defense aspects of the Trust Territory has not decreased over the years, and has been a central element in determining U.S. positions in the negotiations.

The Compact terms take full account of U.S. objectives. First, in order to protect U.S. strategic interests and requirements in the area U.S. must retain the ability to foreclose the area to the military forces of other nations. Second, the U.S. must be assured of the continued use of present military facilities in the Marshall Islands and have the ability to obtain other land areas in the islands should circumstances warrant. Finally, in order to carry out its foreign defense obligations, the United States needs to exercise full authority and responsibility for defense and security matters in or relating to the freely associated states.

The U.S. objective of strategic denial is fully and specifically recognized in the Compact and its related agreements. The mutual security agreements between the United States and the freely associated states provide that the areas will be foreclosed to the military forces and for the military purposes of third nations unless otherwise mutually agreed with the United States. Further, the U.S. military is guaranteed freedom of movement in the lands, waters and airspace of the freely associated states, which also pledge that they will refrain from any action which the U.S. determines to be inconsistent with its defense and security authority.

While the Compact provides the U.S. with the overall authority to establish and use military areas and facilities in the freely associated states, the arrangements for specific use rights are set forth in related agreements. The U.S. has specific land use and operating rights requirements in the Marshall Islands. Arrangements for the continued use of the Kwajalein Missile Range facility in the Marshall Islands have been negotiated with that government. At this time, no defense sites are contemplated in the FSM, although we will continue for a few years to maintain a small Coast Guard Station on Yap. The land use arrangements, and the related agreements in which they are set out, will survive according to their own terms irrespective of the duration of the Compact of Free Association.

During the negotiations, the Trust Territory negotiating commissions expressed a major concern that the U.S. might abuse its plenary defense authority in a manner detrimental to their environments. These fears were based in large part on memories of the U.S. nuclear testing program conducted between 1946 and 1958 in the Marshall Islands. We agreed to satisfy this concern through a general undertaking in the Compact to protect the environment in freely associated states as if it were our own. To this end, the Compact provides for the continued application of U.S. environmental protection standards now in effect in the TTPI to U.S. governmental activities in the freely associated states until new procedures are mutually established. Further, the freely associated states will be treated as if they are part of the U.S. for the purposes of the National Environmental Policy Act. We do not believe that these environmental protections will diminish our overall defense authority for several reasons. First, the President may exempt any U.S. activity from the environmental provisions of the Compact if he finds that so doing would be in the paramount interest of the United States. Second, only the freely associated state governments, as distinguished from their citizens, may bring an action for judicial review of U.S. activities under applicable environmental laws. Under these provisions, the freely associated state governments will have no new nor different nor greater rights than are available to U.S. citizens under such laws. This Compact provision is also conditioned on the right of Congress to change or amend environmental laws in the future. Finally, the United States will be bound by only those environmental standards which the freely associated states apply to themselves.

United States Objectives and the Compact of Free Association

The Administration believes that all of the United States objectives that I have outlined are realized in the Compact of Free Association and its related agreements. The fact that the Compact has been freely and carefully negotiated means that its terms are interdependent and reflect the ideas, suggestions and goals of the parties to the negotiations. The Administration believes that the Compact will create a relationship which will long survive precisely because it meets the central interests and objectives of the parties.

United States objectives would be ill-served by a political relationship that lasts only until the first opportunity to terminate. The Compact or any other relationship between the United States and the Marshall Islands and the Federated States of Micronesia must at all times be considered by each party to offer more advantages than disadvantages. Aside from adequate levels of U.S. grants and services, which cannot be matched from other sources, this requires minimization of political friction points in government-to-government relationships. The Compact places a heavy emphasis on consultation, and is designed to provide the U.S. and the freely associated states with opportunity to assess carefully the significance of any given issue in light of broader objectives, i.e., the maintenance of the political relationship which serves the essential interests of both sides. Once in effect, the Compact will institutionalize American-Micronesian links in several areas and these links will themselves bolster the longevity of the relationship.

The acceptance of the emerging freely associated states by the international and Pacific regional communitites will have an important effect on the stability of the relationship and will serve U.S. foreign policy goals. Just as important, replacing the increasingly outdated Trusteeship arrangement with freely associated states enjoying full internal self-government and the capacity to manage their own foreign relations will improve the U.S. image in the region and in the world. The freely associated states will continue to work cooperatively with the state of Hawaii and with our Pacific territories of American Samoa and Guam and with the Commonwealth of the Northern Marianas and will establish close working relations with the independent island nations to their south, thereby helping to enlarge institutions heretofore limited to the South Pacific for benefit to all of the Pacific.

The **Chairman**. Thank you very much, Mr. Ambassador.

There are a number of what are referred to as transition issues, and I suspect one of my major concerns at this particular moment is how do we get from here to there.

Mr. **Zeder**. Mr. Chairman, I think Mr. Montoya is prepared to address that. I believe he may even have a statement. Would you like to have him address that at this time?

The **Chairman**. Surely.

STATEMENT OF HON. RICHARD MONTOYA, ASSISTANT SECRETARY, TERRITORIAL AND INTERNATIONAL AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. **Montoya**. Mr. Chairman, it's indeed a pleasure to be before you again. I thank you, and I'm sure that the territorial leaders thank you as well for your personal commitment and that of Senator Johnston on moving the compact of Free Association forward in an expeditious way.

The **Chairman**. Excuse me, Mr. Secretary. I wonder if I might interrupt for just a moment so that Senator Johnston can ask a couple of questions of Mr. Zeder and then keep another commitment for a few minutes before he returns.

[The prepared statements of Mr. Montoya and Mr. Darby follow:]

STATEMENT OF RICHARD T. MONTOYA, ASSISTANT SECRETARY OF THE INTERIOR FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, REGARDING THE COMPACT OF FREE ASSOCIATION, MAY 24, 1984

Mr. Chairman and Members of the Committee. I am pleased to appear before you today to discuss the Compact of Free Association and United States administration of the Trust Territory of the Pacific Islands.

The Trust Territory of the Pacific Islands is administered by the United States under a strategic trusteeship agreement with the Security Council of the United Nations. The Trust Territory of the Pacific Islands is the last of eleven trust territories established by the United Nations after World War II and the only strategic trust.

Goals and Results

If I may, I would like to briefly review with you our accomplishments in preparing the Federated States of Micronesia and the Marshall Islands for free association. In 1947, when the the trusteeship agreement was approved, the United States agreed to discharge its duties as administering authority by pursuing four broad goals in Micronesia. These four goals are (1) political development, (2) social advancement, (3) educational advancement, and (4) economic advancement. The record of the United States in Micronesia is one of steady progress toward achieving the goals set out in the trusteeship agreement.

Political

Fully stated, the political development goal in the trusteeship agreement is:

> foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the trust territory a progressively increasing share in the administrative services in the territory; shall develop their participation in government; and give due recognition to the customs of the inhabitants in providing a system of law for the territory; and shall take other appropriate measures toward these ends. . . .

The United States' record in the area of political development is exemplary. The United States has fostered development of suitable political institutions and progressively has turned over the reins of government to the Micronesians. Micronesians, from the beginning, were the most numerous of Trust Territory government employees. Gradually, they began to assume positions of authority until, in the late 1970s, they began running their own constitutional governments.

The Congress of Micronesia was established in 1965. It was the legislative arm of government until disbanded in 1979, when it became evident that the Federated States of Micronesia, the Marshall Islands and Palau were going their separate political ways. Besides fulfilling its legislative function, the Congress was the vehicle by which Micronesia's capable political leaders and able negotiators gained their experience.

The end result of this political development has been fulfillment of the United States' pledge of self-government or independence. Within the authority of the Secretary of the Interior, self-government was given the Federated States of Micronesia, and the Marshall Islands at the time of recognition of their constitutional governments. The Compact, however, will take the process one step further by providing a new legal basis for the political relationship and for the international political status of the freely associated states.

Social

Fully stated, the social advancement goal in the trusteeship agreement is:

> promote the social advancement of the inhabitants and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants; control the traffic in arms and ammunition; and institute such other regulations as may be necessary to protect the inhabitants against social abuses. . . .

Fundamental freedoms of speech, religion, assembly and petition have been protected since the first days of the trusteeship. Basic rights were also included in the Trust Territory Code, from its inception.

Generous funding has been devoted to health in the Trust Territory. Each of the population centers boasts a modern hospital that is functioning or soon to be completed. Inroads have been made against major diseases, and the health of Micronesians is very good. There is a growing number of doctors and trained medical personnel in the islands. Even though an outbreak of cholera occurred in Truk in 1982, earlier training, quick reaction and support by United States and international agencies brought the situation under control. Although cholera will be endemic to Truk for some time to come, long-term sanitation measures are expected to lessen the chances of contracting the disease and similar gastrointestinal illnesses.

The incidence of illegal trafficking in arms, ammunition, drugs and acoholic beverages is minimal in the Trust Territory. While there has been some illegal drug traffic, mostly involving marijuana, local law enforcement officials believe that the situation is under control. Special training programs for law enforcement personnel have contributed to the high level of competence of local Micronesian authorities.

Again, the United States should receive high marks in the area of social advancement for its effort involving the protection of rights, freedom, and health.

Education

Fully stated, the educational advancement goal in the trusteeship agreement is:

> promote the educational advancement of the inhabitants, and to this end shall take steps toward the establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue higher education, including training on the professional level.

The United States has devoted a great deal in the way of human and financial resources to develop educational opportunities in Micronesia. An elementary education is available free to every child in Micronesia, as recommended in the trusteeship agreement. The United States has gone further, however, by establishing a secondary school system. A vocational training facility is located in Palau, civic action teams provide construction training, and nurse training is available. The civic action teams, provided by the Department of Defense, deserve a special word of praise for their valuable work and their spirit of cooperation. It is one of the finest programs we have had in Micronesia.

The College of Micronesia, located in Ponape, provides college level training. In addition, numerous Micronesian students are able to pursue college degrees outside Micronesia on scholarship funds provided for that purpose. Over the years, a significant number of Micronesians have returned home with professional degrees.

Universal education, where there was little before, is one of the achievements of United States' administration in Micronesia.

Economics

Fully stated, the economic advancement goal in the trusteeship agreement is:

> promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; encourage the development of fisheries, agriculture, and industries;

> protect the inhabitants against the loss of their lands and resources; and improve the means of transportation and communication. . . .

It has been long recognized that Micronesia's greatest potential for economic development lies in the areas of marine resources, agriculture, tourism, and handicrafts. The fishing industry has always headed the list of potential economic development activities in Micronesia. Lack of capital, infrastructure, and marketing, however, have hampered fisheries development. Copra has been a staple of the Micronesian economy, especially in the outer islands. Pepper in Ponape has been another cash crop, but with a potential not fully realized. There is potential for marketable citrus from Kosrae. Over the past twenty years, tourism in Micronesia has expanded, drawing especially from the Pacific-rim market. But this expansion has been uneven and of limited local benefit. Potential also exists for a larger cottage handicraft industry. Micronesian handicrafts are of high quality, but in limited supply.

In order to capitalize on this potential, a substantial foundation on which to build economic development is mandatory. Communications and transportation must be readily available. Reliable water and power are required for the tourist and fishing industries. Roads and docks are necessary.

Capital Improvements. It was with these needs in mind that the Ford administration proposed a capital infrastructure program for Micronesia, which has been funded by the American taxpayer with over $333 million in United States grants. In 1976, a comprehensive infrastructure plan was developed for the Trust Territory of the Pacific Islands by representatives of the Department of the Interior and the Government of the Trust Territory, in consultation with Micronesian officials. The purpose of the plan was to provide a basic infrastructure, including airfields, sewer and water systems, roads, docks, and electrical systems for each of the then district centers. The High Commissioner, with the concurrence of the Department of the Interior, entered into an agreement with the Department of the Navy to have the Navy Officer in Charge of Construction for the Marianas act as construction agent in all of the Trust Territory, except the Marshall Islands, where the United States Army Corps of Engineers was designated construction agent. The original cost estimate of the capital infrastructure program was $170 million. As the program progressed, the scope of some projects was redefined, and project funds provided by the Federal Aviation Administration and the Environmental Protection Agency were added to the program. The $4.4 million requested for fiscal year 1985 will complete our capital infrastructure commitment. Including 1985 funding, over $333 million will have been spent on this capital infrastructure effort.

It should be noted that nineteen projects were increased and only nine were decreased in scope. This was primarily the result of economic cost/benefit analysis, environmental concerns, or cultural considerations. In addition, twenty-six projects have been added to the program, raising the total number of projects from thirty-nine to sixty-five. To date, seventy-five percent of the funds that have been received have been obligated, and of those obligated, eighty-five percent of the construction is in place.

The following is a table of capital infrastructure funding (in $000) through the fiscal year 1985 budget request:

Project	Yap	Truk	Ponape	Kosrae	Marshall Islands	Palau	Total TTPI
Roads	$ 8,622	$ 5,751	$13,560	$ 6,281	$ -0-	$ 9,822	$44,036
Docks	9,395	2,972	2,623	8,135	7,270	696	31,091
Water Systems	554	8,257	2,658	4,600	4,487	9,654	30,210
Water Resources	4,060	2,136	613	160	258	3,954	11,181
Sewer	4,492	11,837	3,794	2,666	17,024	11,581	51,394
Electrical	1,562	2,789	4,717	3,352	4,256	9,847	26,523
Airfields	16,710	24,162	4,402	18,323	498	19,215	83,310
Hospitals	481	2,500	-0-	-0-	7,790	960	11,731
Miscellaneous	550	2,625	560	150	1,268	-0-	5,153
Subtotals	$46,426	$63,029	$32,927	$43,667	$42,851	$65,729	$294,629
TT-Wide Projects (A & E, & Admin.)							28,646
Subtotal							$323,275
FY85 Budget (DOI, FAA, EPA)							9,000
TOTAL							$333,275

Maintenance. Essential to the capital improvement program is proper maintenance of the facilities once in place. This issue was of greatest concern to me during my visits to the

Trust Territory over the past year. In addition, this committee has consistently expressed concern for proper maintenance of Micronesia's capital infrastructure. Since fiscal year 1981, $23.4 million have been appropriated for operations and maintenance in Micronesia, and $3 million is budgeted for fiscal year 1985. With the current funding, we are putting in place what we believe will be an exemplary operations and maintenance program, including parts ordering and inventory, maintenance planning, and education and training of Micronesian maintenance specialists and mechanics. Under the Compact of Free Association, the Federated States of Micronesia and the Marshall Islands will be able to continue the program or pattern a similar program after the operations and maintenance program we have established.

Technical Assistance. We note further that in addition to financial management funds provided by our technical assistance program, the Department will be sponsoring in the Pacific area this summer a conference on business development. Interested Micronesian business people will be invited. The conference will deal with developing entrepreneurial skills in the areas of business planning, market analysis, and accessing of existing resources.

We provided the Federated States of Micronesia with a $50,000 grant for development of the economic development plan required by the Compact. As a follow-up to this effort, we plan to consult with the Micronesian governments and may consider allocating technical assistance funds for stationing an economic development specialist with each government. These specialists would seek promising investment and walk investors through the local governmental systems.

We believe that the completion of our capital improvement program, together with our maintenance and technical assistance efforts, are providing the Micronesians with a good foundation for increasing economic development during the period of the Compact.

Compact

Under section 211 of the Compact, fiscal year 1985 funding will be approximately $66.6 million for the Federated States of Micronesia and $29.4 million for the Marshall Islands. A portion of these funds could be used by the respective government for development of business skills. Over the fifteen-year period of the Compact, forty percent of these annual grants under section 211 are to be devoted to capital account items such as building additional infrastructure or maintaining the infrastructure already in place. These substantial moneys should aid the fledgling Micronesian economies in gaining their wings.

In addition to this section 211 funding, the Compact provides, in section 242, that the Federated States of Micronesia and the Marshall Islands will be accorded the benefits of General Headnote 3(a) of the Tariff Schedules of the United States. This means that for most products, where a maximum of 70% of value is imported, access to the United

States will be duty free. This should be viewed as a substantial economic development tool.

Preparation for the Future

For many years now, Micronesians have been dependent on government. Private sector development has not been substantial. These new governments must be mindful of the opportunities that exist in the South Pacific region so that they can actively pursue export markets for their products after a steady flow of such products can be guaranteed. I am hopeful that the Micronesians will break the mold of the past and concentrate their efforts on creating a cadre of entrepreneuers. Only such a business oriented group will be able to build an economic system of sufficient strength to support the new freely associated states when the United States is no longer bound to provide assistance. The wise use of Compact economic development funds by the Federated States of Micronesia and the Marshall Islands will determine Micronesian economic prosperity in the years after the Compact.

STATEMENT OF COMMODORE JACK N. DARBY
DEPUTY DIRECTOR FOR POLITICO-MILITARY AFFAIRS
OFFICE OF THE JOINT CHIEFS OF STAFF
BEFORE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
REGARDING THE
COMPACT OF FREE ASSOCIATION WITH THE MARSHALL ISLANDS AND THE FEDERATED STATES OF MICRONESIA
24 MAY 1984

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THE DEPARTMENT OF DEFENSE'S OBJECTIVES IN MICRONESIA ARE ESSENTIALLY FOURFOLD. THEY ARE SPECIFICALLY:

A. DENIAL OF MICRONESIA TO THE ARMED FORCES OF HOSTILE NATIONS.

B. ACCESS FOR US MILITARY FORCES.

C. UNHAMPERED USE OF KWAJALEIN MISSILE RANGE (KMR).

D. CONTINGENCY USE OPTIONS IN PALAU.

THERE ARE TWO INTERESTS OF LESSER IMPORTANCE:

A. RETENTION OF COAST GUARD LORAN-C AT YAP, FEDERATED STATES OF MICRONESIA (FSM).

B. CONTINUANCE OF A SMALL MILITARY CIVIC ACTION PROGRAM TO ENHANCE UNITED STATES-MICRONESIA RELATIONS.

THE JOINT CHIEFS OF STAFF HAVE CONDUCTED A REVIEW OF THE TERMS OF THE COMPACT OF FREE ASSOCIATION AS IT APPLIES TO OUR SECURITY INTERESTS IN THE PACIFIC.

THEY FIND THAT THE COMPACT FULLY MEETS THESE REQUIREMENTS AND WE THEREFORE URGE THE COMPACT WITH THE MARSHALL ISLANDS AND THE FEDERATED STATES OF MICRONESIA BE APPROVED.

Senator **Johnston**. I'm ranking minority member of the Energy and Water Subcommittee which is going into a markup at 10:30, so I'm going to have to go over there and catch part of that and come back here.

Mr. Ambassador, again, welcome.

With respect to the three concerns which I had, I think the relationship of those concerns, that is, how the United States terminates, how it modifies, and how it administers—those three concerns would be, I think, sort of a matter of internal American policy which would not pertain to the compact, or would not modify the compact. Am I correct?

Mr. **Zeder**. That's correct, sir.

Senator **Johnston**. So that if we either informally or formally, through amendment of the legislation, provide that the United States, when it agrees on its side of the mutual agreement, means to do so by act of Congress, that action would not require, in your view, that you go back and resubmit the compact to the people in Micronesia?

Mr. **Zeder**. No, sir; it would not.

Senator **Johnston**. Do you not have in mind that the Congress, since this compact would initially be by act of Congress, that a modification or termination would require—or at least that it would be consistent with the intent thereof for the Congress to act to approve any termination or modification?

Mr. **Zeder**. Yes, sir, Senator.

I think it might be useful to read from the compact itself on that. This is section 471(c) I'm reading from: "Without prejudice to the effects of this compact under international law, this compact has the force and effect of a statute under the laws of the United States."

Senator **Johnston**. All right. So if we should, for example, add a section on to the end of this law that would just make it clear that modifications or terminations would require an act of Congress that would be consistent with the intent and consistent with the legislation as you see it?

Mr. **Zeder**. Yes, sir.

I think maybe Mr. Berg would like to add something to that.

Mr. **Berg**. Senator, thank you. The section which the Ambassador read states explicitly that the compact would be a statute law of the United States. As such, the executive branch acting alone could not amend it. Because of the statutory nature of the compact, it would require Congressional approval for any amendments.

With respect to termination, the procedures for mutual or unilateral termination are also set forth in the compact.

In our judgment, for any act as dramatic as termination of the compact—given the fact that the compact is a statute law—we cannot foresee that such an act would take place without Congressional consultation and concurrence.

Senator **Johnston**. That's good. I like that answer. First, because it is consistent with the way I think it should be; and, second, because if we do amend this statute, then it will be perfectly consistent with the answer that you have given. The only reason to amend it would be just to be absolutely sure because, while we have a meeting of the minds, there might be some judge at some future time in some future administration who may not understand it as clearly and as perfectly as we do.

The CHAIRMAN. Could I ask just a couple of questions which just extend that discussion the next couple of logical steps.

Senator JOHNSTON. Sure.

The CHAIRMAN. Are those responses equally applicable to the Mutual Security Agreement with the Marshall Islands?

Mr. ZEDER. The Mutual Security Agreement with the Marshall Islands would not directly because it is a subsidiary agreement under the compact, and thus considered to be an executive agreement. But there are some caveats that I would like to have Mr. Berg explain to you.

Mr. BERG. Senator, the Mutual Security Agreement with Marshall Islands and the Friendship, Cooperation and Mutual Security Agreement with the Federated States of Micronesia are both treated in the same way.

In compact section 354(b), Congress, when it approves that section, will authorize and empower the executive branch to fulfill American obligations under those agreements

Further, in compact section 454(b), Congress specifically provides that these agreements will remain in effect for their stated terms. Therefore, since Congress will be authorizing the executive branch to enter into these agreements and will be stating explicitly in the compact what their terms are, we believe that termination by the United States, or more precisely agreement to termination of a Mutual Security Agreement by the United States, must also involve congressional consultation and concurrence.

The CHAIRMAN. If I understand your statement correctly, that would also apply to the Friendship Cooperation and Mutual Security Agreement with the FSM?

Mr. BERG. Yes, sir.

The CHAIRMAN. Thank you very much. And thank you, Senator Johnston, for yielding.

Senator JOHNSTON. Certainly.

Mr. Ambassador, with respect to denial, the United States unilaterally determines what is "seeking access to" or "use of" the Marshall Islands. Is that not correct?

Mr. ZEDER. That's correct, sir.

Senator JOHNSTON. Now, does the Congress have any role in that?

Mr. ZEDER. Senator, the denial right is set forth in the compact and under a subsidiary agreement and would be an Executive function, but we, of course, would consult with Congress in all these matters.

The CHAIRMAN. Well, I thought Mr. Berg just said that the Mutual Security Agreement, in which denial is a part, is subject to further action by the Congress, and that the Executive, because of the wording in the compact and of the legislation, could not act unilaterally.

Mr. BERG. Perhaps to correct. We understood Senator Johnston to be asking a different question. We understood him to be asking a question about the implementation of the denial right; in other words, if an occurrence took place while the denial right was in effect and if there was a requirement for a determination of whether there has been an unwarranted or unwanted intrusion, then who would make that choice.

Senator **Johnston**. That's correct.

Mr. **Berg**. In our judgment, that would be, in the first instance, a determination of the executive branch.

Senator **Johnston**. But with respect to the denial right no change could be made by the Executive without an act of Congress?

Mr. **Zeder**. That's correct, sir.

Senator **Johnston**. Thank you, Mr. Chairman.

The **Chairman**. Thank you very much.

Mr. Secretary.

Mr. **Montoya**. Thank you.

In the interest of time, Mr. Chairman, I will comply with your wishes and just address the question.

The question, as I recall it, sir, was you were concerned about the lack of us addressing the transition——

The **Chairman**. We have that problem in the budget submissions of what assumptions were made and we had that problem when it came to the budget resolution. How do we bridge the gap of making certain that we have enough money to do what is necessary to meet our commitments prior to the compact and simultaneously have the funds necessary in the budget to do what is required under the compact? I want to make certain that both ends of that are appropriately covered in the budgetary requests and our budgetary actions in the Congress.

Mr. **Montoya**. Mr. Chairman, an audit is taking place right now to get a better handle on these transition issues.

There is a general understanding of the dollar amount involved, but the bottom line is these will be programmed in the 1986 budget. And my budget staff is working on some target numbers to take care of all of the pending obligations that we have that would be covered under this transition issue as a whole.

The **Chairman**. Are you suggesting that we're waiting until 1986 to meet commitments that have been made in past years?

Mr. **Montoya**. It is being factored in the 1986 budget; yes, sir.

The **Chairman**. Why isn't it being factored into a supplemental?

Mr. **Montoya**. Should the compact be ratified in short order, I am certain that the administration would switch those over into a supplement request. It would be logical that those would both have to come on line at about the same time.

The **Chairman**. Well, that's been my concern. It seems to me that is the only rational way we can really attempt to address this question. Obviously the administration, in developing the budget for 1985, had to do so some time ago. Those recommendations reflect the conditions that were apparent at the time the budget submissions were prepared. But if we act, we have already changed conditions. The compact has been ratified by plebiscite in the countries involved, our administration has approved those compacts, sent them to the Congress, and if Congress approves and ratifies those Compacts, then the situation is quite different than it was when the budget was prepared and submitted to the Congress.

I just want to make certain that we are prepared to move and move quickly to meet those changed conditions rather than just assume that's business as usual and 1986 is soon enough.

Mr. Montoya. In my view, sir, that's the way we're going. And you are exactly right, when we went into the planning cycle for 1985 it was this time last year, and we still didn't have any dates on when this process was going to move through this body.

The Chairman. I recognize that dilemma, but I'm very much concerned that we don't allow that to fall between the cracks.

The reason I spent a little time, and perhaps almost sound boring about it, is that my conversation with OMB over how we just handle where we put certain items in the budget, under what function of the budget, indicated to me we're having a substantial disconnect in understanding.

In talking to OMB—and I think I—I don't mean to be unfair to OMB—it's awfully hard to be unfair to OMB no matter how hard you try. [Laughter.]

I really wasn't certain that they understood what we're talking about. I'm still not certain that they understood what we're talking about.

Senator Johnston. I think they'll understand it if we spell it out in the statute.

The Chairman. Well, they have strange ways of reading very clear and plain language.

There are a number of what are referred to as transition issues which were not included in the administration's budget for fiscal year 1985. And I would like to know if the administration really intends to submit a supplemental to cover that in the event Congress ratifies the compacts?

Mr. Montoya. In the event that the Congress ratifies the compact, there are some pending obligations that the United States has regarding certain deficits that were incurred by the trust territory government in Saipan. And I would imagine that those will have to come on line at the same time; prior claims, prior-service claims, some of the things that the trust territory was doing at the time, and just a ballpark—and I emphasize ballpark—estimate is approximately $33 million.

The Chairman. I think it must be carefully delineated both by you and by us that we don't mean to be less analytical about meeting commitments under these circumstances than we would have been under ordinary ongoing administration. I still think it requires scrutiny and approval. It's not just a blank check and an automatic approval of all expenditure

Mr. Montoya. I would agree with that. And I'm sure that as we go into this 1986 planning cycle and we discuss if we have to prioritize these things on a cash flow strategy, that that can apply itself to a possible supplemental request if need be.

The Chairman. While the recent budget submissions indicate progress in local administration of programs and financial management, it appears that additional technical assistance is needed.

Would you outline what activities are currently underway and whether such assistance would continue under the compact?

Mr. Montoya. Yes, sir; at this time we have about got the hardware, the computers on line in each of the governments. That's moving forward to include the States and the Federated States of Micronesia.

We're quite excited about the way that the Micronesians have taken to computerizing their financial matters in the Governments of the Marshalls and the Federated States of Micronesia.

You're correct that there are some parts of that that are just now coming on line. We will continue to provide assistance and training to those Governments so that they can, No. 1, track their financial matters, to include, hopefully, forecasting their growth needs in the future. We see that as a commitment that we will see to fruition.

The CHAIRMAN. You would expect that to continue under the compact?

Mr. MONTOYA. Yes, sir.

Mr. ZEDER. Yes, sir.

I think it might be useful for the record to quote from section 219 of the compact which addresses this issue:

> All funds previously appropriated to the Trust Territory of the Pacific Islands which are unobligated by the government of the Trust Territory Pacific Islands, as of the effective date of this Compact, shall accrue to the governments of the Marshall Islands and the Federated States of Micronesia for the purposes for which such funds were originally appropriated as determined by the Government of the United States.

The CHAIRMAN. Does the administration plan to implement the provisions of the compact, such as, financial assistance, prior to the effective date?

Mr. ZEDER. No, sir; we do not.

The CHAIRMAN. What consultation do you plan to have with members of this committee in agreeing to an effective date implementing the compact and taking into account any procedures with respect to the United Nations?

Mr. ZEDER. Mr. Chairman, we look forward to full consultation with you on all these matters.

The CHAIRMAN. Prior to their event?

Mr. ZEDER. Yes, sir.

The CHAIRMAN. You know, definition of consultation is sometimes necessary. [Laughter.]

Mr. ZEDER. I understand.

The CHAIRMAN. Why, if the Congress were willing to approve the compact, should not the President be authorized to implement any provisions of the compact which are not inconsistent with the Trusteeship Agreement, subject to appropriations acts?

Mr. ZEDER. Mr. Chairman, our policy has always been to seek a simultaneous situation where the termination of the trusteeship and the compact come into effect at the same time.

The CHAIRMAN. But if the Congress were willing to take actions that were consistent with both the Trusteeship Agreement and the compacts, having approved the compacts and expressed that agreement in appropriations act, why shouldn't we be able to do that?

Mr. ZEDER. Well, I think——

The CHAIRMAN. For our benefit and theirs.

Mr. ZEDER. I don't believe there's any legal reason or any policy that would prohibit it. I don't believe there is a precise answer for that hypothetical situation. Maybe Mr. Berg would like to add to it.

Mr. **Berg**. The administration does not believe that all the portions of the compact could be put into effect prior to termination of the Trusteeship Agreement. There are, in fact, some which could.

The **Chairman**. That's all I'm referring to. I'm not suggesting that all provisions of the compact should be; but those which are not inconsistent with the Trusteeship Agreement which the administration and the Congress can agree upon, and particularly if we have made the appropriations in appropriations acts, why couldn't we go forward in anticipation rather than awaiting the events?

Mr. **Berg**. I would say, Senator, that there is no legal reason under the conditions that you outlined that we couldn't go forward and——

The **Chairman**. And no generic policy reason, I would hope.

Mr. **Berg**. Other than our general desire to bring the compact fully into effect simultaneously with trusteeship termination. We would look forward to close consultations on that.

The **Chairman**. Looking at the compact, how does 5(1) relate to the $21.4 million which Congress has already provided to Bikini resettlement?

Mr. **Zeder**. That's included in the section 177 agreement by way of acknowledgement.

The **Chairman**. Does the administration plan to assist in any cleanup of Bikini?

Mr. **Zeder**. Yes, sir.

Mr. Chairman, if I may go on with the Bikini issue and expand on it a little bit. We have to date provided substantial funds to the people of Bikini. For example, there is a trust fund of $6 million and there's another trust fund that the Bikinians received totaling $21.4 million. Under compact section 177, they will receive an additional $75 million. They will also have access to the Claims Tribunal, which will award some $45 million. In total, these sums are in excess of $100 million and are available.

As far as the cleanup is concerned, in talking with our Energy Department, we recognize the U.S. commitment to the Bikinians, and it's really a question of what is in their best interest in their judgment.

There are certainly funds available, and the United States has recognized its obligation. We look forward to working with this committee on how we can best serve the interests of the Bikinians and the U.S. interest, too.

Whether there are not sufficient funds for them to do it, or whether it appears there are sufficient funds for them to do it, they want to do it themselves.

Incidentally, right now, I am advised that the island of Bikini itself has a lower radiation level than we have in this building. The problem is the food supply. And at the present time in Kili, the U.S. Government is expending somewhere in the neighborhood of $250,000 a year to supply food.

Now, if that is the dimension of the food-supply program, even if its doubled, maybe 400 people would go back to Bikini, we should be able to handle that well within any budget requirements that we have today. But the application of those funds is the important part, and we are working with the Bikinians and with the government of the Marshall Islands—which is our primary source in these discussions—to try to identify the best course for those people in their judgment and in ours.

The **Chairman**. I have to go to the floor of the Senate in a few minutes with respect to some legislation which is on the floor right now.

Senator Hatch had asked the opportunity to appear and ask some questions. This might be an appropriate time to yield the floor to Senator Hatch, who is perfectly welcome, is certainly welcome before this committee, and we welcome his participation.

Senator Hecht, I understand, has no objection to that process at this point.

Senator **Hecht**. That is correct, sir.

The **Chairman**. Thank you.

I will turn it over to you, Senator Hatch.

Senator **Hatch**. Thank you, Senator McClure. I want to personally thank you for your kindness and courtesy in inviting me here today and letting me have this time and the opportunity to participate in this committee's consideration of the Compact of Free Association.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator **Hatch**. I wish the members of the Energy Committee to know that I support the expeditious enactment of the legislation that will implement this compact.

These islands have been American trust territories since 1947 and, in my opinion, it is clearly time that we acknowledge the Marshall Islands and the Federated States of Micronesia to be independent nations and that we establish equitable and friendly relations with them as independent nations.

I believe the compact does achieve these ends, and I have enjoyed listening to some of the explanations as we have been sitting here today.

To supply a proper context for my questions though, I wish to begin with a short statement.

Our constituents, Senator Hecht and myself, and, of course, the other Senators from the affected States, as well as the citizens of Arizona, Nevada, and Utah feel a special kinship with the people of the Marshall Islands in that all of them played host to America's atmospheric nuclear bomb tests.

Sixty-six nuclear explosions were set off in the vicinity of Enewetak and Bikini Islands. One hundred, quote, "announced," unquote, nuclear bombs were detonated above the Nevada test site.

Both the Pacific and the Nevada test sites were selected because the areas were virtually without people. However, in both areas people were there. These Marshallese and Americans are convinced that the tests damaged their property and their health and, as a consequence, of course, they have filed numerous claims against the United States in court.

Apparently, there are people within the executive branch who contend that the situations in the Marshall Islands and Nevada were different and that, consequently, the United States should address the claims of the Marshallese and ignore the comparable claims of American citizens. Theirs is a poor argument, in my opinion.

There are differences, but these differences tend to balance out and the similarities between the situations in the Marshall Islands and Nevada are far more compelling.

It is true that the people had to be moved from some of the islands in the Pacific. Virtually no one was asked to evacuate the area surrounding the Nevada test site; although there were some occasions when a limited evacuation would have made sense.

Some of the bombs in the Pacific tests were far larger than anything exploded in Nevada. Bikini Island was made uninhabitable, and it has been documented that at least some people in the Pacific were exposed to high doses of nuclear radiation.

However, there were only 180 people from Bikini and Enewetak who were directly affected by the tests, as I understand it, and there were approximately 3,000 people in all who may have been affected in all of the Marshall Islands; while in 1980 an interagency task force estimated that there were 170,000 American citizens who lived immediately downwind of the Nevada test site.

This latter estimate has been increased several times in recent years so that it now stands at a shade less than 200,000.

Therefore, although the Pacific tests were more formidable, many more Americans than Marshallese lived within the immediate effects of our atmospheric nuclear testing program.

Also, because of the negligence of the U.S. Government, the monitoring of the Americans who lived in the shadow of the Nevada tests was woefully inadequate.

As a result, it is now basically impossible to determine with any precision the radiation doses these people received from the fallout.

Federal bureaucrats keep insisting that these doses were minimal. But I have sat through many hours of congressional hearings on the subject, and listened to the experiences of those unsuspecting citizens who actually endured the fallout; people who lost their hair and had radiation burns on their skin, and whose sheep had their guts burned out with alpha and beta radiation. I can tell you that it is highly likely that not just some Marshallese but also some Americans were exposed to more than low-level radiation.

On May 10, Judge Jenkins in Utah handed down his 489-page opinion on the first 24 Nevada fallout liability cases for cancer damages. In making awards to the 10 of the 24 plaintiffs, the judge ruled that the Government had been clearly negligent in failing to warn the people downwind of the dangers and in failing to monitor their fallout doses adequately.

Government officials seem far more intent, it seems to me, upon insuring public acceptance of the tests than in taking rudimentary precautions to protect the public. Judge Jenkins also feels that the Government underestimates the doses people received at that time.

The people of the Marshall Islands and the people of Arizona, Nevada, and my home State of Utah face a common problem in proving that these tests harmed them.

Both in the Marshall Islands and in the vicinity of the Nevada test site the populations are too small for the scientists to make statistically significant assessments that would determine absolutely whether any cancers were caused by the fallout.

Even if such determinations could be made, they would not allow scientists or the courts to tell whether an individual's cancer was caused by fallout, and scientists cannot learn what caused a cancer by evaluating the cancer itself. In the past, this dilemma has forestalled a settlement of claims for both the Marshallese and the Americans

Judge Jenkins' decision directly addresses this dilemma of causality. Both in the Pacific and in the United States there have been small-scale studies that have suggested an increase in cancer following the bomb tests.

Although these studies could not possibly meet the 95 percent confidence level that is the scientific standard of proof, the judge ruled that they can meet a, quote, "legal standard of proof," unquote, which is only, quote, "more likely than not," unquote, or a 50-percent confidence level.

This finding led the way to the judge's compensating those persons among the 24 plaintiffs with the cancers that are most closely connected to radiation.

Judge Jenkins has made a laudatory effort to provide justice within the law. He did his best to adapt existing law to the limits of science. Arguments will inevitably be made that his effort has been a little bit too creative. Still, his desire to provide justice is, in my opinion, unquestionable.

The judge was bound by the Federal Tort Claims Act in the consideration of the Nevada fallout cases; while the Office of Micronesian Affairs was not so bound when it negotiated an agreement to settle the Pacific fallout cases.

Consequently, because of its freer hand, the Office of Micronesian Affairs in designing section 177 of the Compact of Free Association may have arrived at a better solution for providing justice to all of the people who lived in the shadow of America's atmospheric nuclear tests.

Section 177 establishes a $150 million trust fund to settle the fallout damages claims of the Marshallese. This fund is to be administered by a commission that will not be limited in its actions by the rigors of tort law.

The fund can be used not only to pay health damages to individuals but also to pay property damages and to provide health screening and health care.

The advantages to this arrangement are that the Federal liability is limited to a set amount, the determination of damages ceases to be an adversarial procedure, and health screening and health care can be provided that will serve the entire community that was subject to the fallout to begin with.

This last point is particularly important, because I do not believe that a remedy can be fair unless, in some way, it serves the community as a whole.

Individual damages should go to the persons who are most likely to have contracted cancer from the fallout. However, determining who warrants compensation for individual damages is sufficiently difficult that deserving people may very well not be served unless there is a project or a facility that can serve everyone in the community who has cancer.

In light of the fact that a Federal district judge ~~has~~ ruled that the Federal Government was negligent and that the Nevada tests did cause cancers among American citizens, and in light of the fact that numerous congressional hearings have led most of the Members of Congress who attended them to a similar conclusion, and in light of the fact that this administration seeks to establish a $150 million trust fund to settle the Marshallese claims that they and their property were damaged by our Pacific nuclear tests, I'd like to ask you this, Mr. Ambassador, and the rest of the witnesses here, do you not agree that it makes sense to establish a comparable trust fund to settle the comparable claims of American citizens who likewise have suffered—and expecially since we have the proof of negligence in this case?

Mr. Ambassador.

Mr. ZEDER. Thank you, Senator.

I appreciate your remarks on this. You are absolutely accurate in pointing out that there is a difference evidently in the administration's view of this. I believe that this was articulated in a letter dated December 9, 1983, to you, from the President's Special Assistant for Legislative Affairs, in which he pointed out that in the administration's judgment there are fundamental and controlling legal and factual distinctions between the Marshall Islands' nuclear claims and the procedure which was used to settle them and those domestic claims with which you are primarily concerned.

We believe that these distinctions require us to evaluate the Marshall settlements on its merit apart from any other claims issue, and in the context of the foreign affairs process and national security interests in the compact. And to expand on that a little, I would like to just give you a little more background on the compact and what we base our judgment on, if I may.

Senator HATCH. Sure.

Mr. ZEDER. Under the compact the claims of those affected by the U.S. nuclear testing program are settled on a government-to-government basis. And settlement of the claims in the compact is viewed by both governments as a necessary element of any future political status arrangement to be implemented in connection with termination of the trusteeship.

Thus, the compact nuclear claims settlement must be understood as a negotiated political settlement, agreed to as an element of the overall government-to-government agreement, involving significant foreign affairs and national security interests of the United States; absent such as settlement, the issues surrounding the U.S. nuclear testing program would remain unresolved and would serve as a source of friction between the two governments in the post-trusteeship era.

Senator HATCH. Could I interrupt you at that point?

Mr. ZEDER. Yes.

Senator HATCH. There's a heck of a lot of friction between the Federal Government and three major States in this country.

I might just mention to you the one major argument supporting the provision that you're making of radiation damages trust fund to the Marshall Islanders is that it is a quid pro quo for their continued cooperation with our national defense interests.

Well, I suggest that Arizona, Nevada, and Utah are also important to our national defense. I might mention, there are 20 military installations in Arizona, 12 in Nevada, and 14 in Utah. And some of these installations, such as the Nevada test site and Dugway Proving Ground, cover vast expanses of acreage.

In my home State of Utah, 1,806,152 acres are devoted precisely to military purposes.

You know, my constituents have always supported our defense efforts and our military personnel, but I think you need to know this.

One of my clear senses is that Utah's opposed to putting the MX in Utah for a number of reasons, but one of those reasons was because they felt betrayed by the Government's handling of the Nevada atmospheric test.

I might add, credibility is essential for public support. Now, you want credibility with the Marshall Islanders, and I admit this is kind of tough for you to answer because your job is to get this Marshall Island compact through, this Compact of Free Association through, and I understand that, and I'm with you and I'm going to help you to do that, but I want you to also go back to the Government and tell them there are some other people they have got to consider as well, and I'm going to try and see that they consider those people.

I'll just say this. You know, if the Government expects the American public to support measures that are essential to the national defense, then it seems to me that the Government has to acknowledge that when defense programs inadvertently harm civilians, then the Government has to make restitution for this harm just like any of us would if we were negligent ourselves.

You know, the credibility of our weapons development and deployment programs, it seems to me, is at stake and, therefore, I think it's important to restore the faith of the American people as well as the faith of foreign peoples when their faith has been shaken as it has been in the Marshall Islands case and as it certainly has been in the Utah, Nevada, and Arizona cases.

I think it's certainly equally important to restore the faith of Americans living within this country as it is to restore the faith of those who have relied on our Government and have, in my opinion, not been treated fairly until this compact has come up in the Islands of Micronesia. So I'm concerned about that argument, because we have got a lot to be concerned about in our state, too.

But go ahead. I just had to make those comments. And I'd like to have the military people here today tell me why I'm wrong.

Mr. **Zeder**. Thank you, Senator.

We have a number of points that I'm prepared to address here that articulate our reasoning that we are dealing with a different type of situation. However, I understand that we are pressed for time, and if it would be permissible I would like to have this submitted to the record.

Senator **Hatch**. Why don't you submit that for the record, and I'm sure Senator Hecht would accept that for the record.[1]

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[1] The material appears in the appendix.

If I could say, Mr. Ambassador, I don't think there's an argument in the world that this Government could make that they should treat people in this country any differently than they treat people in the Marshall Islands. I want them both treated the same. I want them treated equally. I want the recognition of the suffering of our people in Utah to be recognized. I want to see the same type of courtesy, consideration, sympathy, compassion, and feelings asserted to our people.

I understand that OMB is going to fight this right down the line. They're going to try and get appeals taken from the case that was decided in Utah. I understand that. But OMB doesn't run the Government; doesn't run this country, and all I can say is that I hope that you will help us; that you will go back to this State Department, this administration and all concerned, the military, and see what you can do.

Now, I would like to ask the members of the military who are here speaking for this compact why it is that you don't see the need to solve the problems out in Utah, Nevada, and Arizona—three States that characteristically support the military with Senators and Members of Congress who are among your strongest supporters?

Give me one reason—give me one reason why our people in Utah shouldn't be treated equally or shouldn't be treated fairly and compassionately on this issue, and especially since it isn't going to end regardless of what happens here unless we can perhaps solve it in this compact.

Mr. KELLY. Senator Hatch, I'm James Kelly——

Senator HATCH. Go ahead. I'm aware of that.

Mr. KELLY [continuing]. From the Department of Defense. I cannot give you any reason why citizens of the United States should be treated any differently.

Senator HATCH. Why not? Why not?

Mr. KELLY. I cannot give you any reason why they should not be treated the same.

Senator HATCH. Then give me a reason why you can't give me a reason. Why in the hell can't you give me a reason as to why our people can't be treated as well?

I don't mean to embarrass you.

Mr. KELLY. No, sir.

Senator HATCH. You people are doing your job, because what you're saying is you're just not allowed to give a reason.

Mr. KELLY. Yes, sir; I cannot give you a reason why they should be treated differently other than it may be a matter of execution of responsibilities under the law. And I will certainly relay your very serious concerns to other senior officials of the Department of Defense for the matters that you have raised here today.

Senator HATCH. Well, I appreciate it. You're not sitting here looking at somebody that doesn't support you generally.

Mr. KELLY. I know that very well.

Senator HATCH. And you, Mr. Ambassador.

Mr. ZEDER. I do. And I want to reiterate Mr. Kelly's pledge to report it.

I want to congratulate you very much, Senator, I appreciate you and admire you for your position on this, and you have our full cooperation.

Senator HATCH. Well, I appreciate that.

My personal feeling is—and I hope that the members of this committee will consider it—my feeling is that we ought to come up with a reasonable approach here. I would even agree to not admitting the liability of the Federal Government so that it does not set a precedent and help resolve the problems for our people in this country. I'd like to be the strongest supporter of this particular compact on the Senate floor. I know I can't be because of the eloquent members of this committee, but I can certainly assist them.

But I would sure like to have you consider our needs here, because they can't give—it's no reflection on you, Mr. Kelly—they can't give one reason why we should be treated any differently from anybody else with regard to this.

As a matter of fact, I think all of the persuasive reasons are against the Federal Government. And I have to admit, it's going to be very difficult to sustain that case because—on appeal probably, because there are difficult problems of absolute proof in this matter. And the judge has had to do what he thought was best within the law, and I think he's done a commendable job. We would like it to be taken out of that speculative area and treated like you're treating the Micronesians.

And I certainly appreciate your candor, Mr. Kelly, and I'd like my colleagues on this committee to consider in committee if we could work with them on some sort of a resolution of the atmospheric fallout problems in Utah, Nevada, and Arizona as part of this particular compact. And I think we could do it in such a way as to not expose the Federal Government to excessive claims or claims beyond the issues involved within the radiation exposure cases in America.

And to that extent, I would like to ask each of you to go back and talk with the people with whom you work and say—and tell them that you don't have a good reason why we should treat the people in this country any differently from the compassionate way we want to treat the people in the Marshall Islands. And I would certainly appreciate some effort on your part to help do that.

This ought to be automatic. It really ought to be automatic, we ought to be willing to do this because of what would happen.

I have taken too much of this committee's time, but I wanted to make this point and I wanted to ask those particular questions.

The CHAIRMAN. Senator Hecht.

Senator HECHT. Mr. Chairman, I'd like to express my concerns of my distinguished colleague from Utah—I'm from Nevada. I would also like to make a point for the record that we, on September 29, 1983, Senator Laxalt from Nevada, Congresswoman Barbara Vucanovich, and myself signed a letter to the White House expressing the same concerns as my distinguished colleague from Utah.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator HATCH. Mr. Chairman, could I just make one other comment to our colleagues and friends down here at the table?

The CHAIRMAN. Yes.

Senator HATCH. You know, the General Accounting Office has estimated that the Federal Government has spent something like $2 billion investigating the health effects of nuclear radiation. The Federal spending on radiation and other health research now comes to over $80 million a year. And, you know, this is money spent to study just one subject.

If the Federal Government can spend this kind of money, it seems to me, on investigating the problem, I think it ought to spend some money to give the people out there in the shadow of the Nevada test sites a sense of justice as well.

I hope all of you will go back and advocate this in this matter, because we would like to see that done.

But, in any event, I want to thank the distinguished chairman and ranking minority member for giving me this time and being so gracious to me.

The CHAIRMAN. Thank you.

Senator HATCH. I have a lot more questions, but I think we have had good answers.

The CHAIRMAN. Senator Hatch, you're very welcome. Thank you very much.

Senator Johnston.

Senator JOHNSTON. Thank you, Mr. Chairman.

Ambassador Zeder, with respect to denial, the provisions say that if the Government of the United States determines that any third country seeks access to or use of the Marshall Islands by military personnel or for military purposes, et cetera, then we can deny.

Now, my question has to do with the scenario which I think we discussed some time ago about where the Soviets come in with a trade mission. Let's say they want to establish a fishing port, and they come in with their trawlers. These trawlers happen to have a few little antenna on them, or maybe not even initially do they have the antenna, but they create a presence. The next thing you know, they want to put in an air-strip so their planes can land and take fresh fish back to the Soviet Union. These are all nonuniformed people, no military ships, but it could be a military use. In other words, they have the right to come into their port, they could have the right to send in ships.

Could we determine that these ostensibly civilian personnel and ostensibly trade missions have a military usefulness and, therefore, a military purpose?

Mr. ZEDER. Yes, sir, Senator, that's very clear and very precise in the compact. Any such action on the part of the Soviet Union would be dealt with very quickly.

It must be remembered that there are two methods in the compact for dealing with situations that involve a determination of conduct. The first is that as far as any security interests of the United States are concerned, and the answer to this under title 3 of the compact is very clear and very precise, the United States will not allow any unacceptable intrusion. And the Micronesians, I might add, concur wholeheartedly in this approach.

The second method relates to other situations where perhaps funds being spent for economic development, and you used the example of a fishing fleet, could be viewed as a front for other activities. I appreciate that example, because clearly that front would be seen through, and the United States would be asked to say no.

On the other hand, if there is a government development program the Micronesians are contemplating and we disagreed with it as inconsistent with the national development plans—and incidentally, these plans will be given to Congress for review prior to formal U.S. concurrence—we can go to arbitration with them. Arbitration would apply only to governmental actions under the compact that had absolutely no overtones of security interests.

Senator JOHNSTON. Now where is the arbitration, is that provided for here?

Mr. ZEDER. Yes, sir.

Mr. BERG. Senator, that's in title 4, article II of the compact.

Mr. ZEDER. We could read that for the record, if you would like, or just insert it in the record.

Senator JOHNSTON. Now, you don't reach arbitration though if the United States determines that that fishing boat could be useful militarily?

Mr. ZEDER. That's absolutely true.

Senator JOHNSTON. In other words, is it understood that we have full plenary power to say that any activity is military even though we may be wrong?

Mr. ZEDER. Yes, we do, sir, and we intend to exercise it.

Senator JOHNSTON. Any activity whatsoever, we could determine to be military and prevent it?

Mr. ZEDER. Yes, sir.

Senator JOHNSTON. I just want to be absolutely clear.

Mr. ZEDER. Yes, sir.

Senator JOHNSTON. All right. I think that's clear.

Now one other question here. I noticed in the compact section 151 on page 16, it speaks of maintaining representatives residences and additional offices.

Do you have in mind how many offices, how many residences, what the cost of those might be?

Mr. ZEDER. Yes, sir, Senator.

We're in the process of working on the post-trusteeship arrangement now. I would like to add an observation, if I may. I believe that, in the past, we perhaps have not approached the issue of post-trusteeship management in the best possible manner. There has been a lot of misinformation about what the intentions of the United States are on this subject.

I think it should be made clear that this administration welcomes a continuing participation by members of this committee in future activities.

It is contemplated at this time that we will—and the direct answer to your question—have offices that would be U.S. liaison offices in Palau after it approves the compact, they come around, in Ponape in the FSM, and in the Marshalls in Majuro.

This would be a small operation and involve one or two local personnel, some U.S. citizens as liaison people and a U.S. resident representative, but certainly nothing that would appear to resemble an embassy.

These people would be there to cooperate with and to work with the local governments in their plans and programs.

In the United States, we are envisioning an arrangement similar to my office, with joint participation by other agencies; certainly Interior, certainly Defense, certainly the Department of State. In addition, we should include the Department of Commerce, and are proposing this. We would like to work very closely with not only the Senate, but also the House, in developing this program.

We have discussed it with the Micronesians, they are in accord and we will be presenting something to you shortly. We have also presented some ideas to Senator McClure and we want to continue along those lines working with you on that structure.

Senator **JOHNSTON**. Thank you, Mr. Ambassador. Thank you, Mr. Chairman.

The **CHAIRMAN**. Thank you.

I have just a couple of questions and then I'll turn the time—not only the time, but the gavel over to the Senator from Alaska.

Do you interpret the last part of section 222 as permitting the executive branch to avoid reporting on disbursement or other requirements imposed upon it by Congress simply by mutually agreeing with the recipient government?

Mr. **ZEDER**. No, we do not, sir.

The **CHAIRMAN**. Do you interpret this language to permit the executive branch by mutual agreement to permit services, grants or programs to be used for purposes other than as stated in section 221 and as defined in authorization or appropriation acts?

Mr. **ZEDER**. No, sir, we do not.

The **CHAIRMAN**. Does the administration under section 224 interpret the enactment of legislation to constitute agreement of the Government of the United States, or do you interpret this to provide an executive branch veto notwithstanding a request from the FAS and enactment of legislation?

Mr. **ZEDER**. Senator, I think it might be good to quote from 224 and have a little explanation. That's an important issue.

Mr. Berg, would you read that.

Mr. **BERG**. Section 224 states, Mr. Chairman, that the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia may agree from time to time to the extension of additional U.S. grant assistance services and programs as provided by the laws of the United States to the Marshall Islands and the Federated States of Micronesia, respectively.

Therefore, our interpretation of that is consistent with what I believe you said in the first part of your question—the enactment of legislation or the extension of congressional authorization would constitute agreement on behalf of the United States.

The **CHAIRMAN**. Are funds provided under this or any other section subject to the requirements of the anti-impoundment provisions of the Budget Act?

Mr. **ZEDER**. Yes, they are, sir.

The **CHAIRMAN**. I will have some other questions to submit for the record, but I think in the interest of time and to permit others, as well as other witnesses, we do want to hear from the people of the Federated States of Micronesia, and it would be my expectation that rather than imposing upon them the requirement to file the statement and summarize—we have reviewed the statements, they are brief, they are not abusive of the time limits that we have in any way, and I would direct that they may deliver those statements without the interruption or imposition of a time limit on those statements when we hear from them.

With that, I will turn both the time and the gavel over to the distinguished Senator from Alaska, Senator Murkowski.

Senator **Murkowski** [presiding]. Thank you, Mr. Chairman.

With your permission, I would excuse the current panel and call the next panel of witnesses.

Thank you, gentlemen.

The next panel is President Tosiwo Nakayama, Federated States of Micronesia. The group accompanying President Nakayama of Federated States of Micronesia would be Hon. Bethwel Henry, Speaker of the Congress of Federated States of Micronesia; Hon. John Mangefel, Governor, Yap State; Hon. Resio S. Moses, Governor of Ponape State; Hon. Kisande Sos, the Speaker of the Truk State Legislature; Hon. Gaius Nedlic, Speaker of the Kosrae State Legislature.

We welcome you gentlemen to the panel. We would ask that you take your seats at the conference table.

I believe our first witness will be President Nakayama. You may proceed. We welcome you and your accompanying group to the committee. We look forward to your testimony and ask that you proceed.

STATEMENT OF HON. TOSIWO NAKAYAMA, PRESIDENT, FEDERATED STATES OF MICRONESIA

President **Nakayama**. Mr. Chairman and distinguished members, I am honored to appear before you today to offer testimony on behalf of the people of the Federated States of Micronesia.

I am here to urge the U.S. Congress to take prompt and favorable action on Senate Joint Resolution 286. By that action, you would approve the Compact of Free Association between our two countries and set the stage for termination of the 1947 U.N. Trusteeship Agreement.

Mr. Chairman, with me today are: From the FSM National Government, Mr. Bethwel Henry, who is the speaker of the Congress of the Federated States of Micronesia and Mr. Andon Amaraich, chairman of the Commission on the Future Political Status and Transition. From the State governments are Governors John Mangefel of Yap State, and Resio Moses of Ponape State. State legislature Speakers Kisande Sos of Truk, Gaius Nedlic of Kosrae, Salter Etse, and Vice Speaker Joannes Edmond of Ponape. Also with me today are: Senator Kasiano Joseph of Ponape, High Chief Kenmed of Yap, and Chief Magistrate Damian Primo of Ponape.

Following approval of the compact last year in a plebiscite, our people anxiously awaited consideration of this historic document by the Congress of the United States.

It is my hope in coming here to impress upon you the strong hopes of my people that you will approve the compact, and do so in this congressional session.

Mr. Chairman, we, in the Federated States of Micronesia deeply desire to terminate the U.N. Trusteeship under which we have lived for 37 years and become freely associated with the United States.

The occurrence of this hearing today marks one of the final steps in a long and complex process of political development in Micronesia. Remarkably, the document before you is the product of the longest unbroken series of political negotiations in your great Nation's history.

I am especially privileged to have been associated with the long struggle toward free association since its very inception in the mid-1960's. At that time, Micronesia's newly-elected congress members initiated a careful study of possible future status options.

I served in its first Congress of Micronesia and as a member of that original Micronesian status negotiating team. Thus, I speak from firsthand knowledge in applauding the consistant dedication and untiring effort of the United States under successive administrations, both Republican and Democrat.

This steady commitment has reassured Micronesians at every stage of our journey that the United States was adhering to its basic trusteeship responsibility. That is, to foster the advancement of the territory toward self-government or independence, according to the wishes of the Micronesian people.

The people of my country take great pride in their new constitution and look forward to their post-trusteeship association with the United States.

I feel that every American citizen today can and should take pride in the compact of Free Association. The Compact reflects the continued validity of the same democratic principles and ideals that set the United States on its own course over 200 years ago.

When one stops to think about it, there are a number of striking parallels between the Federated States of Micronesia today and the new Nation that evolved from the 13 original United States colonies.

We are as you were, a diverse people, separated by relatively great distances and lacking effective means to communicate with one another.

Just as it was with you, our sense of a need to deal effectively as one Nation with an outside world which we can no longer ignore, led us to adopt a constitution, uniting our states in a federation with a central government.

This institution is entirely new to us and in some ways contrary to our traditions. The only thing that makes it possible for that Government to work—and it has worked well—is that thing that also made your constitution work.

In spite of our local differences, we all share a common belief in the freedom and dignity of the individual, and in the need to work together to protect, nurture and enjoy that individual freedom.

To many Americans, our Pacific islands are a very long distance away and must seem unknown and even mysterious. But, as you consider the compact and the proposed new relationship of free association, it is extremely important for you to realize that a strong natural affinity exists between my people and yours which transcends even the close working relationships that have grown up between us during the Trusteeship.

The fact is that we Micronesians are and always have been very American in spirit. While we are intrigued to think of entering into a formal association with a great Nation such as the United States, this does not strike us as an odd or unnatural result of the years of trusteeship. Quite the contrary, sir.

The relationship of free association, as embodied in the compact, serves our people's sense of need for identity. It meets our ambition after so long a colonial period to take a real place in the community of nations. But at the same time, our free choice of association with the United States allows us to accept your considerable generosity with a sense of dignity. We make our contribution toward the relationship and toward the maintenance of world peace and security by entrusting the defense of our vast area to the United States. Again, given your country's and our mutual dedication to the principles of democracy, and especially our common respect for individual freedoms, the prospect of free association with the United States is a natural alliance.

At this point, Mr. Chairman, I refer to the genuine enthusiasm that is felt by our people throughout the Federated States of Micronesia for the Compact of Free Association. I speak of our individual citizens, who charged their first elected leaders to define that political status which would best ensure a stable and beneficial environment for themselves and future generations.

A variety of options for our political future were discussed widely in Micronesia throughout the mid-1960's. Finally, in 1969, our Joint Committee on Future Political Status informed the United States that the Micronesian people wished to develop a relationship of free association with the United States, based on four fundamental principles; namely:

First, that sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government;

Second, that the people of Micronesia possess the right of self-determination and, may, therefore, choose independence or self-government in free association with any nation or organization of nations;

Third, that the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or government plan at any time; and,

Fourth, that free association should be in the form of a revocable compact terminable unilaterally by either party.

I cannot take time here to describe in detail the lengthy compact negotiations. Suffice to say, that all parties concerned were aware that we were working on a relationship which would be unique in international law.

While the term "free association" has found other forms of expression, free association for Micronesia and the United States was to involve a unique blending of principles and arrangements tailored to the needs of the parties involved.

However unique the relationship may be, it has the support of the people of the Federated States of Micronesia. It has that support largely because the basic principles of the free association relationship embodied in the compact are consistent with each of the four original charges given to our negotiators.

It is also noteworthy that the negotiations did not take place in static circumstances. The political status of the Micronesian parties evolved in quite significant ways, even while the negotiations on free association proceeded.

In fact, one of the original fundamental goals was realized when in 1979 the Micronesian parties with the assistance of the United States installed governments pursuant to the constitutions drafted and freely chosen by the Micronesian peoples themselves. Thus, the people have witnessed and participated in an ongoing process of self-determination throughout the period from 1965 till this very day.

I do not speak lightly of the process of participating. Our leaders and negotiators have taken conscious steps over the past years to inform the people of the various twists and turns in the negotiations and to develop an accurate sense of their preference on a multitude of issues as we went along.

Partially because of the necessity of that ongoing consultation, some have criticized the resultant slow pace of negotiations and even at times accused the Federated States of Micronesia of lacking the resolve to complete the task.

Mr. Chairman, we have never lacked that resolve, and I might add that neither we, the leaders, nor the people have ever put aside our dedication to the original goal.

We Micronesians are a thoughtful people. We have a strong traditional sense of consensus. We know that these qualities lend strength and soundness to our efforts. We have formed our institutions of government and negotiated the free association relationship with meticulous care. For that reason, I am able to appear before you today and state with utter confidence that the people of the Federated States of Micronesia embrace the compact of free association.

I am also able to state with equal confidence that we stand ready to meet the obligations and expectations arising from the compact. Thanks to the dedication of our people, and thanks also to the unflagging support of the United States, we have not had to wait for the termination of the trusteeship to become self-governing.

The United States has wisely fostered our political development in recent years. As a consequence, you are not asked to approve the considerable undertakings in the compact absent the knowledge that the Micronesian people can and will successfully shoulder their responsibilities.

We are both proud and grateful that in a world where the evolution of so many former colonies into nationhood has been fraught with difficulty, instability and disillusionment, our transition out of trusteeship is occurring in an atmosphere of well-founded optimism for the future. Frankly, Mr. Chairman we in the Federated States of Micronesia would have had it no other way.

This statement would be seriously deficient were I not to lay stress on the gratitude of my people specifically for the willingness of the United States to make strong financial commitments to our country, long after your trusteeship obligations have ceased.

For our part, let me say that in a broad sense, the obligations of full faith and credit will flow in both directions under the compact. For us, it will be an obligation of stewardship, to apply your assistance wisely and effectively. We are by no means oblivious to the burdens placed on your budgets in future years, and we are determined to see that your investment is amply rewarded.

In closing, I wish to reiterate that it has been and remains my people's wish to have a close relationship with the United States. While the compact is commonly viewed from a 15-year perspective, given our common principles and ideals, we cannot foresee that the closeness between our countries would ever dissipate.

I firmly believe you can share our pride in this document as a carefully crafted instrument which will protect freedom and democracy in the western Pacific for many years to come.

I thank you for this opportunity to address you, and I hope that you will see fit to act favorably on Senate Joint Resolution 286 during this session.

Senator MURKOWSKI. Thank you very much, President Nakayama.

I think your statement has been well prepared and certainly points out the common interest you have indicated in the success of the Compact of Free Association, and I certainly commend you for a significant and outstanding statement.

I am going to depart from the norm. I have a couple of questions that I would like to direct to you at this time, Mr. President, and then will proceed with the other witnesses who are listed.

I'm wondering if you might provide for the record what you consider the most difficult problem that your people might face under the Compact of Free Association.

President NAKAYAMA. There are so many problems that I believe I would not be able to provide the answer at this point which relate to health development, economic development.

Senator MURKOWSKI. Health and economics.

President NAKAYAMA. Social development.

But if you may permit me, I would like to submit an answer for the record at a later time.

Senator MURKOWSKI. I would assume that in your concluding statement when you made reference to the continuing need for the United States to have financial assistance long after the trusteeship obligations ceased, that would give some relief from the economic problems which you anticipate.

I think there is a genuine inquisitiveness on behalf of the committee and the staff as to how we could best address what you foresee as your priority problems or some of those problems which are also opportunities for independence, and that obviously is a motivation.

I'm wondering if you could indicate under the grant and aid which would be provided under the terms of the compact how this will be used to address these problems of economic nature or social nature, health care and so forth?

Can you comment on your opinion offhand as to the adequacy of the grant and aid which is proposed? Do you feel it's reasonable?

Everybody can use more money, but, on the other hand, the realities dictate that there has to be some decision of what is reasonable and what is unreasonable.

President NAKAYAMA. The negotiation is a give-and-take proposition. We have negotiated the compact for 14 years, and what we have finally resolved is the best result of our process.

At this point, we are undertaking work on developing an economic development plan or an overall development plan for the Federated States of Micronesia. Embodied in that plan would be the things that we would have the grant directed in expending the money for those particular things.

We, of course, do not expect the United States to fully fund what we might think is fully satisfactory to our people. We do feel that we have an obligation on our own to provide whatever is available to support the Government in supplementing the funding that we get from the United States.

If you would take a look at the trends, it is declining during the 15-year period. The assumption is that our people must use the money to develop their own economics so that there is an economic base upon which we would run our Government.

Senator MURKOWSKI. My last question, Mr. President, is with regard to any current trade agreements or agreements relating to fishing rights that you might have with any countries at this time. You may certainly refer to any of your colleagues for any additional elaboration, feel free.

President NAKAYAMA. The question is?

Senator MURKOWSKI. The question specifically is, does the Federated States of Micronesia currently have any trade agreements relating to fishing rights with any other countries?

President NAKAYAMA. We have a fisheries agreement with fishing associations of Japan. It's not a government-to-government agreement. And we also have an agreement with the Tuna Association of the United States, and also an agreement with fishermen—Taiwan fishermen on a smaller scale.

Senator MURKOWSKI. How do those affect your economy? Do you have agreements whereby you process on some of your shore-based plants some of the fish products? Do you sell perhaps fuel, supplies? How does it help you establish or broaden your economic base, or do they just come in and fish your waters and take your fish back to Japan or back to Taiwan?

President NAKAYAMA. The latter is the——

Senator MURKOWSKI. The latter is the case?

President NAKAYAMA. Yes; we license their fishing boats and charge——

Senator MURKOWSKI. And charge them a fee for the license?

President NAKAYAMA. We charge them a fee, yes.

Senator MURKOWSKI. Is it a modest fee, or is it——

President NAKAYAMA. It is a modest fee, as far as I'm concerned.

Senator MURKOWSKI. And do you propose an any more equitable arrangement in the future to assist the economic base of your nation?

President NAKAYAMA. At this point, no. We renegotiate those agreements on an annual basis, depending on what we are able to obtain, that is the settlement.

Senator MURKOWSKI. Do you have processing facilities where you process, say, the tuna?

President NAKAYAMA. We do not. We do, however, have a plan to develop fishery complexes in Truk and in Dublon. In Truk, the United States has financed the completion of a dock which will lead to a fishing base, which will provide fuel, provisions for fishing boats and eventually develop into a canning place.

Senator MURKOWSKI. In your proposal covering the Agreement of Free Association, how far out would you enforce your fisheries area? Has that been determined?

President NAKAYAMA. That's been determined. We have a 200-mile fishery zone.

Senator MURKOWSKI. So you would control the fisheries within that 200 miles, and anyone fishing there would fish there with your permission?

President NAKAYAMA. That is correct.

Senator MURKOWSKI. What is your ability to control that area? Do you have vessels, or how are you going to observe whether there's indiscriminant fishing within that 200-mile area?

President NAKAYAMA. It is a vast area, consisting of about 1.5 million square miles of water. Up to now, the way we have maintained surveillance is by chartering small aircrafts and small boat—one boat—to spot-check the area for possible violations.

Senator MURKOWSKI. That's hardly sufficient.

President NAKAYAMA. That is true.

Senator MURKOWSKI. Is there any way that the United States could assist you in providing surveillance through the technology of satellite observance? Such technology is available. To what extent it's used depends, of course, on cloud cover. But I would think it might have a greater application in your area than my State of Alaska where there is a good deal of cloud cover—although we, too, have a 200-mile limit, and we have the U.S. Coast Guard which has the obligation of enforcing that limit, but it is very, very difficult to do.

President NAKAYAMA. May we put that question to our chief negotiator?

Senator MURKOWSKI. Thank you.

The question was, Might the U.S. Government assist you in some manner to observe, within your 200-mile area, violations?

Mr. AMARAICH. Thank you, Mr. Chairman, Mr. President.

Let me go back a little bit and explain the background of the negotiations with respect to surveillance.

Initially we had hoped that the U.S. Government would be able to assist us to perform surveillance, using U.S. Government agencies. This was told was not possible according to the U.S. Government negotiators.

In the compact itself, you will find that there are certain amounts of money provided for initial startup costs for some kind of surveillance of the fisheries area and then an annual amount that will be given to the governments for the same purpose. I'm not sure whether this will be sufficent, but it is an area where we will need assistance because of that size.

Senator MURKOWSKI. I see, there's about $890 million proposed—excuse me, $890,000, which should initiate a basis to begin the surveillance.

I'm wondering if it's possible for you to encourage the utilization of fish within your 200-mile limit, require processing within your island nations to encourage the productive utilization of your labor force in working out joint ventures with these countries which fish within your waters, and if that might have a positive effect on broadening your economy. It encourages the primary utilization or the primary manufacturing or the primary processing. And I would respectfully urge that you consider that. It might be appropriate for you to communicate with some of the officials who have negotiated with the State Department on behalf of our State where we operate joint ventures with the Soviet Union and which we have with the Polish fleet from time to time, so well as Japan and Taiwan, Portugal, and many nations throughout the world. There are certain considerations and dictates that are made prior to allowing the utilization of that resource. It has benefited our fishermen and our shore-based plants very, very significantly, much more than just having them come in, process the fish at sea and take the fish out of the 200-mile zone.

We have a vote that's going to be called at noon, and it's noon now.

As a consequence, I'm going to recess the hearing to the call of the Chair. And it's my understanding from staff that Senator Matsunaga will be taking over the gavel and reconvening after this vote that's currently on.

I thank you, Mr. President, and other distinguished members of the panel for your testimony up until this point, and wish you a good day. And, of course, your continued testimony will be looked forward to during the balance of the hearing which will again resume upon Senator Matsunaga's appearance.

Thank you.

[Whereupon, at 12 noon, a short recess was called.]

Senator **MATSUNAGA** [presiding]. The committee will come to order.

Our next witness will be the Honorable Bethwel Henry, Speaker of the Congress of the Federated States of Micronesia.

We would be happy to hear from you, Mr. Henry. And as I understand, you are accompanied by the Honorable John A. Mangefel, the Governor of Yap State, and the Honorable Resio S. Moses, Governor of Ponape State, and the Honorable Kisande Sos, the Speaker of the Truk State Legislature, and the Honorable Gaius Nedlic, Speaker of the Kosrae State Legislature, and the Honorable Salter Etse, Speaker of the Ponape State Legislature.

We will be delighted to hear from you, Mr. Henry.

STATEMENT OF HON. BETHWEL HENRY, SPEAKER, CONGRESS OF THE FEDERATED STATES OF MICRONESIA

Mr. **HENRY**. Thank you, Mr. Chairman.

I feel pleasantly honored and privileged and happy to be here before your committee to express the feeling of our National Congress of the Federated States of Micronesia on the subject before this committee.

I am here on behalf of my fellow senators and myself to request your expeditious approval of our joint Compact of Free Association.

It took us 14 years to reach this agreement. During this period of time, many changes happened to what was originally a united Micronesia.

Today, I am part of a delegation representing only one of the four political entities of that area. It is my hope that your action is favorable and prompt so we can move forward without the hesitation of the past.

When this compact was considered by us in the Congress, all the 14 members of this Congress answered the roll call affirmatively.

This hearing is so important to us that even though our Congress is in its 30-day regular budget session in Ponape, I am here in your capital to convey to you our feeling. This marks the first time since our government started in 1979 that I have been away from the scene of our session.

Since the establishment of our constitutional government in 1979, we have been looking forward to the days when we could end the negotiations and start the task of governing. This compact will enable us to have a partnership that is mutually acceptable and beneficial.

It will provide us with a situation where we could make our own plans move ahead definitely. This compact will provide us with a greater confidence in meeting the needs of the people. It will help us to hold onto our own diversity while at the same time share it with you in your capacity to maintain peace throughout the world.

This form of partnership is new and is bound to cause concern from various interests. We agree it is not the best for us, but we also know that at this time our people support it. It is where both of us are able to arrive.

This partnership is important because it will protect our little-known cultures and way of life, while at the same time enable us together to live and work under a new family arrangement. We have adopted many of your values, beliefs, and principles, and we can continue to live and work under these conditions.

Nowadays our Congress, like many other relevant agencies, is helping to set up an FSM government that is good and responsible. We know we must do a good job. Our constituents want a stable government that is responsive to their needs.

Not only must we be reelected in the next election, but it is also our commitment to continue putting in place a democratic government that is efficient and fiscally responsible.

During this session, for instance, we are working on an environment bill that would meet the requirements of the compact. This is a major bill in our Health, Education and Social Affairs committee.

We are also working on the establishment of our National Development Authority for the capital account of the major bloc grants of the compact.

We are also working on the budget procedures between the national and the State governments. We are also working for the establishment of the National Health Insurance Plan, the coverage of which would include the national and the state employees. We have already established a joint task force on the national plan and air transportation with major congressional participation.

There is a bill in our current session also for the establishment of a Monetary Authority. At our request, the International Monetary Fund has provided us a fulltime consultant in Ponape on this effort. The purpose of this authority would be to regulate the amount of currency in the economy so as to check inflation which may be caused by so many compact dollars coming so quickly.

The bill is proposing the use of a usury rate and the regulation of banks, as ways to control the currency.

The IMF consultant has been working for us for about 5 months on this important assignment. Our Ways and Means Committee is putting this bill in first priority consideration.

Recently we have established a National Fisheries Corp. This corporation is in its infant stage, but we have great hopes for it.

We are working to make totally operational a revolving fund for the Telecommunications Corp. which is still trying to get on its own feet.

We are working on a new labor law. This will provide for the regulation of nonresident workers and the training and development of the resident workers.

We have recently established our postal system. And during the last session, we set up the Philatelic Agency.

This session we will pass the postal service's first budget.

There is also a task force on our national plan. I am a member of—National Capital--I am a member of this group, and we certainly look forward to the time when our national government would move to its permanent home—a fact, as you know, so important to good government.

We have much to do, but the most important thing to do now is not in our hands. We have approved the Compact of Free Association now before your committee. We hope you approve it.

Thank you very much, Mr. Chairman, and thank you for the unlimited time you have provided to all of us from the Federated States of Micronesia. Thank you very much.

Senator **Matsunaga**. Thank you very much, Speaker Henry.

I am truly encouraged and gratified to hear of the progress that you are making.

We shall now be happy to hear from Mr. Mangefel.

Governor.

STATEMENT OF HON. JOHN A. MANGEFEL, GOVERNOR, STATE OF YAP, FEDERATED STATES OF MICRONESIA

Governor **Mangefel**. Mr. Chairman, and members of the Committee, I wish to express my gratitude for having the opportunity to place a statement in the record encouraging your favorable consideration of the Compact of Free Association for the Federated States of Micronesia. I apologize if this statement seems too long.

In this statement I hope to put the compact and Micronesia in perspective historically, politically, and financially.

As you may know, it was an act of a Pope some 400 years ago which has brought us to this moment. At that time, we were self-sufficient. We made war and love in our own terms like everyone else. We were independent. We didn't know we were ignorant and undeveloped.

But along came the Spanish for gold and God. In Micronesia, they gave us a lot of God, but no gold. The Germans then followed.

They were interested in commerce and exporting copra. But they weren't around very long—something to do with a big disagreement in Europe. We were then mandated to the Japanese Government.

The Japanese were interested in colonizing and developing Micronesia—by this I mean the islands, of course, not the people.

Well finally, along comes the United States and we get trusteeshipped to you by the United Nations.

During this 400 years a lot of important events and changes took place. Micronesia didn't change much though.

Since U.S. forces set foot on Micronesian Islands, a lot of changes have taken place. During that 40 years, the United States has had many Presidents, both Democrat and Republican. We are a young nation, and our first President came into office only in 1979.

I was 34 years old when I first heard abut the status issue in 1966. I have been connected with the status negotiations when they started 14 years ago. I am now 52 years old. That is a lot of time to invest in one project.

Micronesians, however, on the whole are a patient people. Despite this, I hope that this Congress will have the distinction and honor of approving the Compact of Free Association.

There is not much to say about the political perspective. Because we are part of a U.N. trusteeship, Members of the U.S. Congress do not have a political constituency in Micronesia.

Since the negotiations started, we have worked with three Republican and one Democrat administration in the executive branch; and, of course, with Senators and Representatives of both parties in the Congress.

Consideration of Micronesia has always been a nonpartisan activity, and I think this fact has served everyone well.

I mentioned financial considerations. Some people will think there is a lot of money in the compact. I agree, it is a lot of money.

They may see that there are not a lot of people. So if you divide a lot of money into the not a lot of people, it looks like a lot of money for few people. Well, if you packed us all into one island like Americans do in their cities, it would be a lot of money; but when you are talking about hundreds of islands spread over thousands of miles, then it is not so much.

The FSM, for example, has four major airports, hospitals, docks, powerplants, and so on, and they have to be maintained. Like democracy, it is an expensive proposition.

Like the expense of democracy, it is also a good investment. It costs less than building a nuclear submarine or aircraft carrier, but Micronesia is not in danger of sinking.

It costs less than what lots of Americans pay for alcohol and tobacco every year, and it certainly is a lot healthier. It costs less than it does to operate the U.S. Congress, and it certainly is a lot less political.

Now, if I were on your side of the table, and I was when I was in the Congress of Micronesia, I would ask: "How do we know that the money will be spent wisely?" There are a lot of easy answers to that question, provisions in the compact, and so on. But the most realistic answer is, if we do not spend the compact and our local funds wisely, we will be hurting ourselves.

It is a well-known fact that in the past it was impossible to audit the trust territory. This was partly because of centralized control, partly because of changing of administrations, and partly through poor management and accounting practices.

I, for one, have complained loudly about practices of past administrations. When administrators waste U.S. taxpayers' money, they are also shortchanging Micronesians. We know that better than anybody, and you can be sure we will be careful with the money.

Let me close with this thought: "Because the compact reflects the will of the people, I hope that both the U.S. Congress and the international community will recognize that self-government for the peoples of the trust territory should not be delayed." Those are not my words. They are from President Reagan in the recent issue of Pacific magazine. I heartily agree with them so we can soon get back to the self-government we had 400 years ago. I thank you very much.

Senator **Matsunaga**. Well thank you very much, Governor Mangefel.

I think so long as you can maintain your good humor, it indicates you can maintain your sanity. And sometimes I wonder about that about Members on the Hill here. [Laughter.]

I certainly appreciate your testimony.

We will go next to our next witness, who is Governor Moses of Ponape State.

STATEMENT OF HON. RESIO S. MOSES, GOVERNOR, PONAPE STATE, FEDERATED STATES OF MICRONESIA

Governor **Moses**. Thank you, Mr. Chairman, and counsel.

I am indeed privileged to join my colleagues from the Federation of Micronesia to appear before your committee in relation to your consideration of the Compact of Free Association.

I will make my testimony brief, but I call your attention to the more detailed written reports from myself and the speaker of our legislature, and I would like to submit those reports for your consideration and for the record.

The people of the State of Ponape join their colleagues, citizens in Micronesia, in wanting to see that the Trust Agreement is terminated in Micronesia, and that the U.S. Government considers the question of status as soon as possible. We believe the time has come that that agreement be terminated and that we be given a chance to plan for the future of ourselves and the children in the next 15 or so years.

It is our collective wish, along with our brothers in the federation, for some form of association with the United States.

I suppose that relationship I make reference to is contained in the compact instrument, in many cases, rather simplistic in its basic principles, but perhaps complicated in its full expression.

The complications and the many issues surrounding the matter weighed heavily in the decision of my people in the State of Ponape during the time when we voted to disapprove the compact. We, in Ponape, were the only dissenting unit in the federation.

We believed that these actions and the concerns that gave rise to them are worthy of note in your deliberations. We feel that it is constructive for you to be aware of our doubts and our misgivings expressed by the people, and that this awareness can help build the relationship that we contemplate with the U.S. Government; that it is my duty as Governor of the State of Ponape to present to you several areas of concern which we hope can be alleviated within the framework of the compact.

At the time when our legislature acted not to approve the compact, that was September of last year, it presented the report to our Congress, and in that report our basic objections were noted, and I wish to at this point to read it for the committee: First, that the language of the documents could be read to allow, at the U.S. option, a direct, perhaps sizable, and indefinitely long U.S. military, even a nuclear presence in the area; a result which our people will be later on powerless to resist.

Second, Mr. Chairman, we have concerns relating to the fiscal procedures agreement which establishes a system of U.S. audits that we believe encroach on our State and national sovereignty in the FSM. Other provisions in the agreement could, we think, undermine the balance of power between our State and National Government—which is the basis, I think, of all federalism.

Third, that there were unacceptable deficiencies in the compact negotiation itself and in the plebiscite education and voting procedures.

The details of these concerns are spelled out in my written submission.

Now lastly, Mr. Chairman, there is another major area of concern. This does not relate to our disapproval of the compact, but recognizing that the majority has spoken, we wish to put before the committee—and I think my colleagues throughout the federation join us in our concern—and that is that we find a fear in abrupt discontinuation of certain categorical Federal programs upon entry into the compact.

We estimate that last year we, FSM, had the use of somewhere around $20 million of Federal aid directly from U.S. agencies. We read the compact to mean that a lot of this funding will be terminated.

Our request, therefore, Mr. Chairman, is that a transition arrangement is put in place to allow continuation of those programs until such time as we are able to find resources within our government to replace those programs.

Mr. Chairman, this is the essence of our position on the compact I certainly thank you very much for this opportunity to speak.

[The prepared statements of Governor Moses and Speaker Etse follow:]

STATEMENT OF RESIO S. MOSES
GOVERNOR, STATE OF PONAPE, FEDERATED STATES OF MICRONESIA
ON SENATE JOINT RESOLUTION NO. 286
BEFORE THE UNITED STATES SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES
MAY 24, 1984

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM HONORED TO APPEAR BEFORE YOU TODAY IN COMPANY WITH LEADERS FROM OUR FEDERATION IN CONNECTION WITH YOUR DELIBERATIONS ON THE COMPACT OF FREE ASSOCIATION. THE PEOPLE OF PONAPE JOIN WITH THEIR FELLOW FEDERATED STATES OF MICRONESIA CITIZENS IN REQUESTING THAT THE CONGRESS OF THE UNITED STATES TAKE PROMPT ACTION ON THE COMPACT OF FREE ASSOCIATION. THE TIME HAS COME TO TERMINATE THE UNITED NATIONS TRUSTEESHIP AND FOR US MICRONESIANS TO SET OUR OWN COURSE FOR THE FUTURE. IT IS OUR WISH THAT THE COURSE WE SET SHOULD INCLUDE A CLOSE, LONG-TERM RELATIONSHIP WITH THE UNITED STATES.

THAT RELATIONSHIP, AS EXPRESSED IN THE COMPACT OF FREE ASSOCIATION, IS RELATIVELY UNCOMPLICATED IN ITS BASIC PRINCIPLES, BUT IT IS HIGHLY TECHNICAL AND COMPLEX IN ITS FULL EXPRESSION. THESE COMPLICATIONS AND THE MANY ISSUES SURROUNDING THEM WEIGHED HEAVILY IN THE MINDS OF THE PEOPLE OF MY STATE WHEN THEY WERE CALLED UPON LAST JUNE TO VOTE IN A PLEBISCITE ON THE COMPACT. AS YOU NO DOUBT ARE AWARE, THE PEOPLE OF PONAPE VOTED BY A NARROW MARGIN NOT TO APPROVE THE COMPACT AND SHORTLY THEREAFTER OUR STATE LEGISLATURE FOLLOWED THE LEAD OF THE PEOPLE.

WE BELIEVE THAT THESE ACTIONS AND THE CONCERNS THAT GAVE RISE TO THEM ARE WORTHY OF NOTE IN YOUR DELIBERATIONS. WE FEEL THAT IT IS CONSTRUCTIVE FOR YOU TO BE AWARE OF THE DOUBTS AND MISGIVINGS EXPRESSED BY OUR PEOPLE AND THAT THIS AWARENESS CAN HELP US TO BUILD A STRONGER AND LONGER LASTING RELATIONSHIP. THUS, IT IS MY DUTY TO PRESENT TO YOU SEVERAL AREAS OF CONCERN WHICH WE HOPE CAN BE ALLEVIATED WITHIN THE FRAMEWORK OF THE COMPACT OF FREE ASSOCIATION.

AT THE TIME THE PONAPE STATE LEGISLATURE ACTED NOT TO APPROVE THE COMPACT, IN SEPTEMBER 1983, IT UNDERTOOK A "REPORT TO THE FSM CONGRESS ON THE COMPACT OF FREE ASSOCIATION". IN

ITS REPORT TO THE CONGRESS, THE PONAPE STATE LEGISLATURE OBJECTED TO THE COMPACT AND ITS RELATED AGREEMENTS ON THREE GROUNDS:

FIRST: THAT THE LANGUAGE OF THE DOCUMENTS COULD BE READ TO ALLOW, WHOLLY AT THE UNITED STATES' OPTION, A DIRECT AND SIZEABLE U.S. MILITARY, EVEN A NUCLEAR, PRESENCE IN THE FSM, A RESULT WHICH OUR CITIZENS WOULD BE POWERLESS TO RESIST.

SECOND: THAT THE FISCAL PROCEDURES AGREEMENT ESTABLISHES A SYSTEM OF U.S. GOVERNMENT AUDITS THAT ENCROACHES ON STATE AND FEDERAL SOVEREIGNTY. OTHER PROVISIONS OF THE AGREEMENT COULD UNDERMINE THE BALANCE OF POWERS BETWEEN OUR STATE AND NATIONAL GOVERNMENTS, WHICH IS THE BASIS FOR OUR FEDERAL SYSTEM.

THIRD: THAT THERE WERE UNACCEPTABLE DEFICIENCIES IN THE COMPACT NEGOTIATION ITSELF, AND IN THE PLEBISCITE EDUCATION AND VOTING PROCESS.

REGARDING THE FIRST ISSUE, THE PONAPE STATE LEGISLATURE STATED UNEQUIVOCALLY THAT THE PEOPLE OF PONAPE "ARE DESIROUS OF A TRULY NUCLEAR FREE PACIFIC, FREE FROM ANY FORM OF NUCLEAR WEAPONRY", AND THAT "THE BEST INTERESTS OF THE FEDERATED STATES AND THE REGION AS A WHOLE WOULD BE BETTER SERVED BY PRESERVING A COMPLETELY MILITARILY NUCLEAR FREE CENTRAL PACIFIC". THE LEGISLATORS FEEL THAT THE CENTRAL PACIFIC WILL NOT BE A NUCLEAR TARGET UNLESS AND UNTIL THE U.S. OR ANOTHER MAJOR POWER HAS INTRODUCED OR IS TRANSMITTING NUCLEAR WEAPONS THROUGH ITS ISLANDS, WATERS OR AIRSPACE. THE LEGISLATURE CITED AS PROBLEMATIC THE MUTUAL SECURITY AGREEMENT THAT AUTOMATICALLY BECOMES EFFECTIVE AT THE TERMINATION OF THE COMPACT AND HAS AN INDEFINITE TERM. THIS AGREEMENT WAS SEEN BY THE LEGISLATURE AS ALLOWING THE U.S. TO ESTABLISH DEFENSE FACILITIES IN CONJUNCTION WITH MILITARY OPERATING RIGHTS IN THE FEDERATED STATES OF MICRONESIA. IT PROVIDES THAT THE TWO NATIONS PROMISE TO CONSULT PERIODICALLY AS TO U.S. NEEDS AND THAT, PURSUANT TO THESE CONSULTATIONS, "THE SIGNATORY GOVERNMENTS SHALL ENTER INTO APPROPRIATE ARRANGEMENTS

AS MUTUALLY AGREED". THIS, COUPLED WITH THE AGREED RIGHT AND RESPONSIBILITY OF THE U.S. TO FORECLOSE MILITARY ACCESS OR USE OF FSM TERRITORY BY THIRD COUNTRIES EXCEPT WHERE THE U.S. AND THE FSM MUTUALLY AGREE, WAS SEEN AS AFFECTING AN ESSENTIAL ASPECT OF FSM SOVEREIGNTY, SINCE THE LEGISLATURE DOUBTED THE U.S. WILL EVER VOLUNTARILY GIVE IT UP.

AS TO THE SECOND ISSUE, "THE POSSIBLE IMPACT OF THE COMPACT LANGUAGE ON THE INTERNAL FEDERAL BALANCES OF POWER", THE LEGISLATORS CHARGED THAT, DESPITE THEIR REPEATED AND WELL DOCUMENTED REQUESTS, THE COMMISSION ON FUTURE POLITICAL STATUS AND TRANSITION DID NOT ADDRESS THIS ISSUE IN ITS NEGOTIATIONS. THE LEGISLATORS EXPRESSED CONCERN FOR THE "POTENTIAL FOR CENTRALISTIC TENDENCIES TO EMERGE AND ASSUME CONTROL OVER FINANCIAL ASSISTANCE TARGETED FOR STATE OPERATIONS AND PROGRAMS."

ADDITIONALLY, THE FISCAL PROCEDURES AGREEMENT, WHICH WAS INCLUDED WITH THE COMPACT AGREEMENTS IN THE PLEBISCITE BUT NOT FINALIZED UNTIL FIVE DAYS BEFORE THE PLEBISCITE, WAS CRITICIZED ON BOTH SUBSTANTIVE AND PROCEDURAL GROUNDS BY THE LEGISLATURE. SUBSTANTIVELY, THE AGREEMENT HAS "SIGNIFICANT POTENTIAL FOR IMPACT ON THE INTERNAL RELATIONS WITHIN THE FSM. THE AGREEMENT WAS SEEN AS GIVING THE U.S. GOVERNMENT THE AUTHORITY TO INSPECT BOOKS AND TO REVIEW OPERATIONS AT EVERY LEVEL OF GOVERNMENT AND IN EVERY GOVERNMENTAL AGENCY". THE AGREEMENT MAY GIVE RISE TO CIRCUMSTANCES IN WHICH THE FSM NATIONAL GOVERNMENT COULD UNDERMINE THE FEDERAL SYSTEM OF GOVERNMENT BY ALLOWING NATIONAL INTRUSION INTO STATE POLICY AND EXPENDITURE DECISIONS.

WITH REGARD TO THE PROCEDURAL ENACTMENT OF THE FISCAL PROCEDURES AGREEMENT, THE LEGISLATURE DISAPPROVED OF THE FACT THAT THIS VERY SIGNIFICANT DOCUMENT WAS INCLUDED IN THE PLEBISCITE WITH NO TIME FOR VOTER EDUCATION REGARDING ITS POTENTIAL IMPACT.

THIRD: THE LEGISLATURE ASKED THE CONGRESS TO POSTPONE THE PLEBISCITE BECAUSE THEY QUESTIONED WHETHER THE STATUS COMMISSION HAD ADEQUATELY SOUGHT OUT OR INCORPORATED THE VIEWS

AND CONCERNS OF THE PEOPLE. THE EDUCATION PROCESS ON THE COMPACT, FELT TO BE SECOND ONLY IN IMPORTANCE TO EDUCATION AND PLEBISCITE ON THE CONSTITUTION, WAS CONSIDERED TO BE INADEQUATE. TEACHERS, IN MANY CASES, WERE ILL-TRAINED AND LACKED ADEQUATE INFORMATION RELATING TO THE COMPACT. THE LEGISLATURE STATED THAT THE COMPACT WAS "RUSHED INTO PLEBISCITE WITHOUT PROPER TIME ALLOCATED TO IDENTIFYING ISSUES FOR HONEST AND FRANK DISCUSSIONS WITH THE PEOPLE."

FINDING THE COMPACT DOCUMENTS TO BE DEFICIENT, AND REJECTING THEM, THE LEGISLATORS SAID, "WE HAD A LONG AND CONTINUING FRIENDSHIP WITH THE UNITED STATES WHICH WE DO NOT WISH TO SEVER. BUT WE HAVE A COMMITMENT TO OUR PEOPLE AND AN OBLIGATION TO THE WORLD TO CONDUCT OURSELVES AS A NATION, NOW AND IN THE FUTURE."

FINAL ACTION WAS TAKEN BY THE FSM CONGRESS IN SEPTEMBER OF 1983, WHEN BY FORMAL RESOLUTION, THE CONGRESS APPROVED THE COMPACT OF FREE ASSOCIATION AND ITS RELATED AGREEMENTS. FOLLOWING THIS NATIONAL DECISION, THE STATE LEGISLATURE ENACTED LEGISLATION TO CALL FOR A STATE LEADERSHIP CONFERENCE TO DETERMINE WHAT ROLE THE STATE SHOULD PLAY AS THE COMPACT WAS TRANSMITTED TO THE U.S. CONGRESS AND THE CONGRESSIONAL COMMITTEES BEGAN TO STUDY THE DOCUMENTS AND THE POLITICAL PROCESSES INVOLVED IN THEIR GENERATION.

ON MARCH 2, 1984, BY RESOLUTION, THE PONAPE STATE LEADERSHIP CONFERENCE ACCEPTED THE FACT THAT THE COMPACT WAS APPROVED BY A MAJORITY OF THE PEOPLE OF THE FEDERATED STATES OF MICRONESIA AND BY THE STATE LEGISLATURES OF THE THREE JURISDICTIONS OF THE FEDERATED STATES OF MICRONESIA AND THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA IN ACCORDANCE WITH THE CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA.

THE PONAPE STATE LEADERSHIP CONFERENCE THEN STATED ITS CONVICTION THAT THE DEMOCRATIC PROCESS IS AN IMPORTANT IDEAL THAT SHOULD BE PRESERVED AND RESPECTED THROUGHOUT THE FEDERATED STATES OF MICRONESIA. THE LEADERSHIP CONFERENCE STATED ITS

BELIEF THAT, UPON APPROVAL OF THE COMPACT OF FREE ASSOCIATION BY THE CONGRESS OF THE UNITED STATES, THE GOVERNMENTS OF THE UNITED STATES AND THE FEDERATED STATES OF MICRONESIA WILL, WHERE POSSIBLE, TAKE APPROPRIATE STEPS TO ACCOMMODATE CONCERNS OF THE STATE OF PONAPE DURING THE COMPACT PERIOD.

THE LEADERSHIP CONFERENCE THEN RESOLVED "THAT THE STATE OF PONAPE WILL ACCEPT THE COMPACT OF FREE ASSOCIATION UPON APPROVAL BY THE CONGRESS OF THE UNITED STATES AND THAT THE STATE LEADERSHIP CONFERENCE HOPES AND PRAYS THAT THE GOVERNMENTS OF THE UNITED STATES AND THE FEDERATED STATES OF MICRONESIA WILL RECOGNIZE AND WHERE POSSIBLE, TAKE THE NECESSARY ACTIONS TO RESOLVE THE STATE OF PONAPE'S POINTS OF CONCERN AND RESERVATION AS SET FORTH IN PONAPE STATE LEGISLATURE RESOLUTION NO. 144-83, L.D. 1", AND "THAT THE STATE OF PONAPE HAVE REPRESENTATIVES PARTICIPATE IN THE ACTIVITIES CONCERNING COMPACT APPROVAL, AND THAT SUCH REPRESENTATIVES ARE MANDATED TO FULLY EXPLAIN PONAPE'S REASONS FOR REJECTING THE COMPACT OF FREE ASSOCIATION."

MR. CHAIRMAN, THERE IS ANOTHER MAJOR AREA OF CONCERN TO THE PEOPLE OF PONAPE, BUT WE FIND THAT IT IS A CONCERN ALSO SHARED IN EACH ONE OF THE FOUR STATES OF THE FSM. THEREFORE, I HAVE BEEN ASKED BY MY COLLEAGUES TO INDICATE THEY JOIN WITH ME IN THESE REMARKS. I REFER TO THE VERY DEEP CONCERN FELT BY OUR INDIVIDUAL CITIZENS AND THEIR LOCAL AND STATE REPRESENTATIVES AS TO WHETHER, AFTER TERMINATION OF THE TRUSTEESHIP, THE FSM WILL DERIVE SUFFICIENT REVENUES FROM INTERNAL SOURCES, FROM THE COMPACT, AND FROM OTHER COUNTRIES TO DELIVER ESSENTIAL SERVICES TO THE PEOPLE AND, AT THE SAME TIME, SUSTAIN ECONOMIC GROWTH.

WE ALL KNOW THAT A DOLLAR CAN ONLY BE SPENT ONCE, YET, SOME OF THE COMPACT DOLLARS MAY HAVE BEEN COUNTED MORE THAN ONCE IN ALLOCATING FUNDS FOR DEVELOPMENT ON THE ONE HAND AND DELIVERY OF SERVICES ON THE OTHER. UP TO NOW, MANY OF THE ESSENTIAL GOVERNMENTAL SERVICES TO OUR PEOPLE HAVE BEEN PROVIDED BY THE UNITED STATES IN THE FORM OF A WIDE VARIETY OF FEDERAL PROGRAMS, FUNDED AND ADMINISTERED SEPARATELY BY VARIOUS AGENCIES OF THE U.S. GOVERNMENT. EXACT TOTALS ARE VERY HARD TO DETERMINE, BUT WE ESTIMATE THAT FOR THE FSM IN FY 1983 OVER TWENTY MILLION DOLLARS WORTH OR PROGRAMMATIC AID WAS RECEIVED, IN SUCH VITAL CATEGORIES AS HEALTH, EDUCATION, FOOD,HOUSING, COMMUNITY ACTION, AND OTHERS.

THE COMPACT PROVIDES A TOTAL OF SEVEN MILLION DOLLARS ANNUALLY TO MEET THE SPECIAL NEEDS OF THE FSM IN HEALTH AND EDUCATION, TOGETHER WITH ADDITIONAL GRANTS FOR THESE PURPOSES TOTALLING ABOUT THREE MILLION ANNUALLY.

EVEN THE U.S. NEGOTIATORS ADMITTED THAT THESE AMOUNTS WOULD FALL FAR SHORT OF OVERALL REQUIREMENTS TO OPERATE, MAINTAIN AND ADVANCE THESE VITAL FUNCTIONS OF GOVERNMENT. THEY POINTED, HOWEVER, TO THE BASIC BLOCK GRANT AMOUNTS UNDER COMPACT SECTION 211, AND ARGUED THAT THE SHORTFALL COULD BE MADE UP THERE. THIS WAS A COMMON OBSERVATION ON THE PART OF THE U.S. AT THAT TIME, AND THESE ARE THE DOLLARS WHICH WE FEAR HAVE BEEN SPENT MORE THAN ONCE.

WHAT IS THE ANSWER? CONTINUED FEDERAL PROGRAMS? PERHAPS,FOR NOW, EVEN THOUGH U.S. FEDERAL PROGRAMS WITH THEIR ATTENDANT U.S. LAWS, REGULATIONS AND BUREAUCRACIES, DO NOT EASILY FIT INTO THE CONSTITUTIONAL FRAMEWORK OF POST-TRUSTEESHIP MICRONESIA. AM I ASKING FOR ADDITIONAL COMPACT FUNDS? NOT AT THE PRESENT TIME, BECAUSE THE ACTUAL COST OF THE FSM'S ASSUMING THESE PROGRAM BURDENS ITSELF IS NOT YET KNOWN, BUT IT WILL QUICKLY EMERGE.

I SOLICIT THIS CONGRESS' UNDERSTANDING OF THE RISKS WE ARE UNDERTAKING, AND SEEK YOUR ASSURANCE THAT IN THE EVENT WE FIND IT NECESSARY TO REQUEST ADDITIONAL ASSISTANCE UNDER THE TERMS OF COMPACT SECTION 224, YOU WILL EXAMINE OUR REQUEST WITH THESE REMARKS IN MIND.

THANK YOU, MR. CHAIRMAN, FOR AFFORDING ME THIS OPPORTUNITY TO ADDRESS THE COMMITTEE.

Ponape State Legislature
KOLONIA PONAPE
EASTERN CAROLINE ISLANDS 96941

STATEMENT OF SALTER ETSE, SPEAKER
PONAPE STATE LEGISLATURE
BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
MAY 24, 1984

On the twenty-first of June, nineteen hundred and eighty-three. the people of the State of Ponape, with the highest percentage voter turnout of any State of the Federated States of Micronesia, rejected the Compact of Free Association and its related agreements by a majority of fifty-one percent. Shortly thereafter, on the second of September, the Ponape State Legislature, acting in accordance with its constitutionally prescribed responsibility, joined with the people of the State in voicing its disapproval of the Compact of Free Association and its related agreements.

Why, then, you may ask, are we appearing before you today, surrounded by a host of witnesses in support of the the Compact? Why have we not sought a separate audience with your Committee in an effort to block passage of the Compact itself?

Mr. Chairman, the Federated States of Micronesia is a single nation. We have learned many things from our long relationship with the United States, one of which is that for a nation to succeed, it must rely on the principle of majority rule. Since the majority of the nation as a whole has accepted the Compact of Free Association, Ponape as a part of this nation should abide by its decision.

We have learned another lesson from our long friendship with the United States. If a nation is to be truly democratic, it must not only follow the dictates of majority rule, but it must also respect, and indeed seek to accommodate, the needs and desires of those who find themselves in the minority.

Mr. Chairman, this is why we are appearing before you today. There has been much discussion and speculation as to why the people of Ponape and its elected assembly chose to disapprove the Compact. We hope that by this testimony we can help to set the record straight. Throughout the years, your Committee and its staff have, despite your tremendous congressional demands and responsibilities, taken the time to meet with us and to seek to understand not only our problems but our aspirations as well. We hope that through your thoughtful review of this statement and the dialogue which may follow, your Committee will be able to formulate a more clear understanding and appreciation of the position that the State of Ponape felt compelled to take on the Compact of Free Association, and of our continuing concerns as we rapidly approach the termination of the Trusteeship.

When trying to define the reasons behind the negative vote of the people of our State, we all are at a disadvantage for in fact only the voters themselves can relay why they voted as they did. Yet because we ourselves were part of the process, we do have some sense of the popular mood on that plebiscite date almost a year ago.

First, and perhaps foremost in our understanding of the negative vote, is the fact that the people were not given sufficient time to grasp the contents of the documents. The public interplay between proponents and opponents of the documents, essential to the development of informed public opinion, never fully materialized. Public education was primarily directed to a rehearsal of document content. The ramifications and possible future scenarios which might occur in the post-Trusteeship and post-Compact eras were never adequately explored.

As you may know, the Ponape State Legislature sought to extend the educational process. We were told, however, that the time requirements inherent in the political processes of the United States Congress made this impracticable. The response of many in Ponape to the lack of understanding of the Compact was to go to the polls and vote no. "Sohte wewehki, Soh" (If you don't know, (vote) no), was a popular comment in those days immediately preceding the plebiscite date.

The product of the abbreviated political education process in Ponape State was a negative vote. But the negotiating process on the Compact had dragged out or more than a decade, you may say. Surely in that time, the people should have learned at least the issues if not the actual wording of the Compact agreements. But in fact, important issues could not be discussed until specific words were known, and not until the 21st of June, 1983, were the people asked their opinion on that wording. Not until the 21st of June were they made truly a part of the process.

The procedure for the approval of the Compact within the Federated States, established by act of the FSM Congress, was for the State Legislatures to take action on the Compact following the popular plebiscite. State legislative action on the Compact documents is dictated by the provisions of Section 4 of Article IX of the FSM Constitution. Although in the Ponape Legislature, we felt that the proper ordering of events would have called for legislative action (and indeed, FSM Congressional action) prior to asking our people to commit themselves on the Compact, the realities of national legislation required otherwise.

Following the plebiscite, the Legislatures were accordingly transmitted the Compact documents for their approval. In Ponape, this caused considerable consternation and discussion. Were we only to reiterate the action of the State populace or should we take a more active role in Compact review? The Ponape Legislature opted for the latter, feeling such to be a duty required of itself by the Constitution. The product of that review was also to deny approval of the Compact, but at the same time to seek to articulate in some measure the problems we found inherent in the documents.

The official action of the Legislature and those concerns upon which our action was premised have been expressed in a Resolution and reports adopted by the Legislature in formal Session and directed to the Congress of the Federated States for their consideration prior to their taking action on the agreements.

In denying approval of the Compact agreements, we wish to make it completely clear that it was not in any way the intention of the Legislature to object to the doctrine of free association nor to deny a continuing relationship with the United States. Quite to the contrary. Rather, we sought our FSM Congress to return the documents to the negotiating table. We pressed them to request for improvements in the wording of the Compact agreements so that the agreements would conform more closely with the concepts of free association as we have come to know them, and further pressed them to strengthen the aspects of self-government and sovereignty within the agreements so that they would more correctly reflect our national aspirations and protect the inherent balances of federalism as embodied in the FSM Constitution. As you know, our efforts in this regard were largely unsuccessful, and our concerns remain.

As were the voters of Ponape immediately before the plebiscite, so also was the Legislature distressed with the atmosphere of urgency by which the Compact was being swept through the approval process at the stage of legislative review. Working within this high pressure situation, the Legislature was not able to give the documents the economic, administrative, and financial scrutiny they deserved before it felt compelled to give its decision to an expectant FSM Congress (which, incidentally, had extended its Session to wait upon the Legislature to make up its mind).

Following receipt of the action of the four State Legislatures, the FSM Congress completed the constitutional process of legislative review by approving the Compact and its related agreements on the second of September, 1983.

Since that time, substantial efforts at governmental reorganization are occurring at both the State and National levels. A number of administrative changes are being made with technical assistance being provided by the Department of Interior, and this awareness of the need for administrative proficiency is also carrying over into locally-sponsored activities. The Legislature in Ponape recently provided for a comprehensive personnel and management audit of its public service system and is expecting to implement far-reaching policies to improve the State's public service system. Similar efforts are being made in the financial sector and substantial gains are being made in updating and computerizing the system.

A promising dialogue has begun with the National Government on internal financial matters relative to the Compact, a particularly strong concern about this having been raised repeatedly by this State during the negotiation processes. A similar dialogue has also begun among State and National leaders on their proper roles in the formulation and implementation of the Overall Economic Development Plan.

Such recent developments have raised the level of optimism among State leaders as we move progressively towards the culmination of the Trusteeship. Yet we would be remiss if we did not admit that grave concerns still remain. With passage of the Compact on the immediate horizon, we have had to begin to address the pressing needs of transition and are finding ourselves indeed severely strained in some rather critical quarters.

The sudden loss of federal programs looms as a significant problem for the immediate future. Because they were negotiated several years ago, the Compact figures which were designed to compensate the FSM for the loss of these programs do not measure up to today's needs. Particularly hard-pressed will be our emerging high school graduates who will be denied access to the Pell Grants which have been so instrumental in the postsecondary training of our youth in recent years. With extremely limited financial assistance, their future seems bleak. With the loss of these grants, the possibilities of building a strong and widely representative middle class, so essential to balanced and stable economic growth and political development, will be likewise diminished.

Health and education programs and institutions within the nation will suffer. Programs such as school feeding not only insures nutritious diets and proper nutrition habits among the new generation, but it also provides a basic and stable source of income for local fishermen and farmers which is helping them in that long and difficult process of maturing from a subsistence to a cash crop economy.

Without the assurances of readily available governmental loans, business development will slow. Without relatively easy access to low cost home improvement and construction monies, improvement of family environments and their corrolary affect on living standards and development aspirations will be hampered.

Federal programs have caused leaders in our country to address issues we might not otherwise have recognized as requiring particular government attention. Legal services, aid to the handicapped, vocational rehabilitation and special education come readily to mind. These federal programs have raised the consciousness of our government leaders towards serving the special needs of the people. Recent legislation passed by the U.S. Congress with the support of your Committee has made it possible for the Trust Territory to make even more effective use of these programs, allowing for their adaption to the special needs of our islands. Certainly, we will attempt to carry on the programs we have found most beneficial and necessary for our people. We will tighten our belts where we can. But the trauma of losing all these programs in a single year will be quite severe.

Especially in Ponape where support of the Compact is not overwhelming, it would seem important to ensure that the initiation of a new relationship with the United States begin on the right foot. If we are forced for financial reasons to foreclose in one dramatic step access to so many government services upon which our people have come to depend and upon which others rely for their livelihood, enthusiasm for this new agreement will suffer significantly. Attempts to attenuate the trauma of the loss of federal program support through the use of local revenues will be severely hampered as the economy and local revenue bases are themselves subjected to the negative impact of the sudden withdrawal of these funds from the overall economic base of the State. Because substantial amounts of federal program support are dedicated to National Government use on Ponape, the effect of their loss on the economy of our State is especially severe.

The ultimate key to success of the Compact is economic self-sufficiency. Without this, we can never become a truly self-reliant people in this modern age. The period of the Compact is for only fifteen years, but we believe that foreign investors and indeed our own emerging entrepreneurial class must look to a much longer period of growth before our economy can be considered truly self-sustaining. And yet Micronesia does have a very valuable natural resource--our strategic location. It is essential that our right to lease this resource at a fair market price be recognized as a major component in our own economic development. Thus our initial concern over the inequity of the United States' insistence on indefinite military rights without a definite floor of financial assistance continues to trouble us.

Also of concern to us are the matters we have come to refer to as "unsettled issues of transition." Among these are the Prior Service Benefits program, War Claims, Indefinite Land Use Agreements, prior deficits, and a mounting medical referral bill, all of which if passed from the Trusteeship onto the new governments will make our efforts to enter the Compact period on a positive foot even more difficult.

There is more. The U.S. Administration-sponsored Five-Year CIP program has left us with several unsatisfactory projects which, coupled with a mounting maintenance bill, will put additional severe strains on the budgets of our emerging governments. The implacement of new facilities has also substantially increased operation costs. For example, the recent expansion of the electrical distribution system in Ponape is resulting in far greater costs for energy production. This makes the construction of the planned hydroelectric facility at Nan Pihl a necessity.

Where authorization for these projects has already been passed by the U.S. Congress, but funding is not yet available or fully appropriated, we would most appreciate your extension of these authorizations into the Compact period. With the many competing demands for limited Compact dollars, and the monumental task of trying to spur enough development to compensate for the first radical drop in U.S. assistance only five short years after initiation of the Compact, transition legislation by the U.S. Congress for the satisfactory completion of Trust Territory CIP programs within our State and to fully fund the planned hydroelectric facility would be most appreciated.

Self-government made possible for our emerging nation under the Compact will not only result in new opportunities for our people. It will also require of us, and especially our leadership, the acceptance of many unfamiliar responsibilities. As a newly-created federal form of government, we face many internal challenges as well. We are excited about these new challenges and are preparing as best we can to meet them. As novices, we will make many mistakes, and we humbly request your patience as we go about the process of governing ourselves.

As you may know, Ponape was distressed at the magnitude of audit authority in the Compact documents which extends far beyond that necessary for financial compliance. We fully intend to be financially accountable for the proper legal uses of Compact funds. But we humbly request that the Congress caution the U.S. Administration to be respectful of our governmental integrity when reviewing State and National operations within the Federated States. Likewise, as we have repeatedly gone on record in the past, we are sincerely committed to promoting a nuclear-free zone in our waters and we trust that the United States will respect this commitment in addressing its own nuclear strategies and in carrying forward its discussions on nuclear issues with other nations in the world.

Mr. Chairman and Members of the Committee, thank you very much for according to us this opportunity to express our feelings and concerns on the Compact of Free Association and its related agreements. We stand ready to attempt to answer any questions you may have for us. Kalahngan.

Senator MATSUNAGA. Well, thank you very much, Governor. We certainly will look into your suggestions. The longer statement will be made a part of the record and will appear as though presented in full. Your statement in full will appear in the record.

Governor MOSES. Thank you very much.

Senator MATSUNAGA. Our next witness will be Speaker Kisande Sos.

Mr. Speaker, we're happy to hear from you.

STATEMENT OF HON. KISANDE SOS, SPEAKER, TRUK STATE LEGISLATURE, FEDERATED STATES OF MICRONESIA

Mr. SOS. Mr. Chairman and members of the committee.

It is a great honor for me to appear before you today. It is my first visit to your beautiful capitol, and I am pleased to have the opportunity to present the views of the people of Truk regarding the proposed Compact of Free Association upon which you are now deliberating.

With your permission, as background for my later remarks, I would like to give you a brief description of the State of Truk and its people.

According to the scholars, our islands were discovered and settled thousands of years ago by skilled and courageous explorers who spanned the vast, uncharted western Pacific Ocean in search of a new life.

According to our own oral history, the settlement of our islands began with the arrival on Moen Island—the location of our present State capitol—of a man and his wife.

When they first set foot upon the land at a place called Mechitiu, the island was devoid of vegetation and wildlife. In due course, the man and his wife bore children and populated the Island of Moen, planted trees and food-bearing plants, and settled the other islands as well. At the same time, they developed Trukese society and culture.

Present-day Truk, consisting of 42 separate islands, with an estimated population of nearly 45,000, is one of the four states of the Federated States of Micronesia.

While our total land area is less than 50 square miles—one-half of the size of the original District of Columbia—the total ocean area of our state is 28,950 square miles. About 75 percent of our people live on the 14 Islands which lie within the Truk Lagoon.

The Truk Lagoon, with over 50 submerged wrecks of ships and airplanes, is world-famous among scuba divers as a unique diving experience.

These relics of the devastation suffered during World War II are the single strongest attraction for visitors from as far away as Europe and Australia.

All of our citizens of our state can communicate with each other in the Trukese language, which is spoken by the residents of the Lagoon. There is also a classic, esoteric language known as Itang which is spoken by only our highest hereditary leaders.

We are a youthful society, in the sense that about 60 percent of our people are of school age.

Our greatest single need is for economic development; a need we share with the many developing countries elsewhere in the world.

The value of our exports has been only a fraction of that of imports throughout the trusteeship years. Commodities imported for direct personal consumption are substantial. Indeed, Sears, Roebuck & Co. and other mail-order houses do a thriving business in Truk and throughout Micronesia. With shipping costs included, the net outflow of dollars from Truk is probably close to $12 million annually.

The total per capita annual income for 1981 was a mere $280.

Yet, against this background of need, our children are not unlike those in your country, they want education, training, business or employment opportunities—and their parents want the same thing.

Real potential exists for development of our marine resources, for poultry and swine production, for farming, for increases in the efficiency of our present wholesale and retail trade and service organizations. And I am convinced that we have the essential human resources to develop our economy to its fullest practical extent, the human intelligence and human will and energy and determination to do it.

What then is retarding our development? The answer: The greatest single obstacle to our economic development is the virtual absence of investment capital.

This problem has a long history, but suffice it to say, there has never been enough capital available to even the best potential borrower, and such capital as there has been is offered on strictly zero-risk terms.

Our banks require cash deposits equal to the principal amount of the loan. In other words, they loan us our own money or none at all. I think that is what is called a catch-22 situation: we can borrow the money only if we have the money in the first place; but, since we do not have any money, we cannot borrow any.

What has all this to do with the proposed Compact of Free Association upon which this committee now deliberates?

The prompt approval and implementation of the compact by the United States will bring a significant increase over present trust territory levels of funding; and, more important, the termination of the trusteeship and the full inauguration of our constitutional self-rule will give us the challenge and chance we need to spur progress.

I characterize the implementation of the compact as marking a point of substantial fulfillment of U.S. obligations, rather than full and final fullfilment, because I notice that my government will have the right to come back and ask for some additional help for my people if we try our best and still find it impossible to overcome our current lack of development.

I am pleased to report that both the people of our state and the state legislature have given their wholehearted approval to the compact.

In the June 21, 1983, plebiscite the compact was approved in Truk State by 95 percent of the voters participating.

After careful consideration of the compact and its related documents, the Truk State Legislature, on July 29, 1983, adopted resolution No. 2-63, expressing unqualified acceptance of the compact, in accordance with our national constitution and laws. Our State was the first to express its approval of the compact.

I am also pleased to report that just one day prior to my departure from Truk, our legislature adopted resolution No. 2-94 by unanimous vote, respectfully requesting the U.S. Government to approve and implement the compact at the earliest possible time. I think this sentiment is prevalent throughout the Federated States.

We know that many of you are familiar with our needs. Some of you have spent many hours over a period of many years in an effort to help us solve our numerous problems. And some of you may have doubts about the wisdom or adequacy of some of the provisions of the compact as it now stands. Some of you may want to do more for us than the compact offers. But I urge you on behalf of the people of the State of Truk to approve the compact as it stands at the earliest practicable time.

It is not a perfect document. Since it is the handiwork of human beings, it is by nature imperfect, but it is the best that we can achieve for now.

Its terms are reasonably fair to all parties. Above all else, it is time to lay the trusteeship behind us and to establish a new relationship as two sovereign states in free and equal association with one another.

Mr. Chairman, our people and our governments have pondered the terms of this Compact of Free Association and have embraced it. We urge you to do the same.

Thank you, Mr. Chairman.

Senator MATSUNAGA. Thank you, Mr. Speaker.

I think your testimony indicates that your people are fully behind the action you seek here, and that will definitely weigh heavily with the Congress. Thank you very much.

We will now proceed to Speaker Gaius Nedlic, Speaker of the Kosrae State Legislature.

Mr. Speaker.

STATEMENT OF HON. GAIUS NEDLIC, SPEAKER, KOSRAE STATE LEGISLATURE, FEDERATED STATES OF MICRONESIA

Mr. NEDLIC. Thank you very much, Mr. Chairman and members of the committee.

It is also a great pleasure and privilege for me to appear before you today representing the State of Kosrae. And I'm very sure you know where Kosrae is.

On behalf of Governor George and the people of Kosrae and the Federated States of Micronesia, I want to thank this committee for inviting the State government through our national government to present its views on the Compact of Free Association.

I suppose the most important statement I can make here today is to assure this committee that the results of the June 21 plebiscite in Kosrae represent a free and informed act of self-determination by our people.

After years of discussion and debate on future political status, and a very successful public information program before the plebiscite, the people of Kosrae voted 89 percent in favor of the compact.

As speaker of the State legislature in Kosrae, I presided over the debate on approval of the compact by our legislative branch after the plebiscite, as required by the FSM constitution.

The approval of the compact by our legislature is further testimony to the fact that the people of Kosrae and their leaders support the central government of the Federated States of Micronesia in seeking termination of the trusteeship in favor of Free Association.

Mr. Chairman, in the last few years, the people of Kosrae have gone to the polls three separate times to make important political decisions. First, we voted on July 12, 1978, to ratify the constitution of the FSM. On June 21, 1983, we voted to approve the compact. In 1983, we went to the polls again and voted to approve our own State constitution.

We have many challenges ahead of us and we know that the next decade will be one of historic changes.

However, Mr. Chairman, I want you to know that the people of Kosrae believe they have made the right choices, and we are ready for Free Association.

We will continue to need the help of this Congress and of the United States to meet some of our needs, but the first step is to put the compact into effect.

Under the compact, and through wise planning and honest efforts by our State and national leaders, we can and will achieve our goals of successful self-government and economic development.

We are grateful for the friendship, assistance, and partnership which the United States has offered to us under the compact.

With God's help, and through our own best efforts, we will enjoy in the years ahead the blessings of liberty that all peoples seek.

Thank you very much, Mr. Chairman, for having this opportunity to speak to the committee.

Senator MATSUNAGA. Thank you very much, Mr. Speaker.

I notice that in your plebiscite you didn't do as well as in Truk, but still it was 89 percent. And, in the last election, my own people sent me here by only an 82-percent majority. So you're still doing much better than most of us.

Mr. NEDLIC. Thank you very much.

Senator MATSUNAGA. Our next witness is the Speaker of the Ponape Legislature, Speaker Etse.

Mr. Etse.

Governor MOSES. Mr. Chairman, the statement for the speaker has been submitted along with my statement for the record.

Senator MATSUNAGA. I see. So he will not be here.

Governor MOSES. That is correct, sir.

Senator MATSUNAGA. His statement will appear in the record along with yours.

There was a question here—I think a very good question—by Governor Moses, and maybe Mr. Jim Berg of the Status Office can respond to the concern expressed.

Are you in a position to do that now?

Mr. BERG. Yes, I am, Senator, if you could recognize me.

Senator MATSUNAGA. I will recognize you for that purpose then.

Mr. BERG. Perhaps you could direct my attention to the specific question.

Senator **Matsunaga**. This was relative to the security provisions would allow the United States to introduce military presence without the FSM consent, particularly with nuclear arms.

Mr. **Berg**. If I recall the way that this was addressed in Mr. Moses opening statement, I will make the following observation: Under the terms of the Compact of Free Association, the U.S. Government would have full authority and responsibility for security and defense matters in the Federated States of Micronesia for a period of 15 years.

Were such U.S. authority to continue thereafter, it would continue on the basis of mutual agreement. Associated, however, with that is the ability of the United States—and I might stress the obligation and responsibility of the United States in this are—for a much longer period of time to assure that the area is never again used for aggressive military purposes and to foreclose the area to the military purposes and members of third countries. This is the long-term obligation of the United States that I think Governor Moses was referring to.

We take this very seriously, and we view it as an obligation as much as we view it as an authority. Coupled with that obligation is the obligation to defend the area the way we would defend our closest allies; and, coupled with that obligation is the continued commitment to their future economic development.

I think the question of the introduction of nuclear weapons and nuclear materials is handled explicitly and directly in the compact and in a special subsidiary agreement which we have with the Federated States of Micronesia. We believe, and we have been told that the Federated States of Micronesia believes, that these issues are handled in accordance with their own constitution.

Senator **Matsunaga**. Thank you, Mr. Berg.

And, of course, I do hope, Governor Moses, that the exact details can be worked out in supplementary agreements relative to the compact.

Governor **Moses**. Mr. Chairman.

Senator **Matsunaga**. Yes, Governor.

Governor **Moses**. That is correct, Mr. Chairman. The State of Ponape is concerned about the indefinite denial clause embodied in the document itself. We do not know the exact measure, the meaning of Mr. Berg's statements, and that is the fear that we have, implications of the evident denial right for military purposes in the area.

Thank you, Mr. Chairman.

Senator **Matsunaga**. As I understand Mr. Berg's statement, after a 15-year period there would be renegotiations with respect to this specific provision. And at that time, I suppose the FSM would be in a much better position to determine their ability to defend themselves, or even to continue the relationship such that they can call upon the United States to provide whatever military assistance the state feels necessary.

You don't feel that this is a bar to a request by your people for approval of the compact, do you?

Governor **Moses**. Would you state that again? I did not quite understand that.

Senator MATSUNAGA. I said the reservations, sir, which you have mentioned are not such that you would oppose the approval of the compact?

Governor MOSES. We have respected the majority decision of our people and I have stated that for the record.

Senator MATSUNAGA. So as the leader of your people, you are asking that compact be approved here regardless of some of the reservations you hold?

Governor MOSES. Yes, Mr. Chairman, with the idea in mind that if possible sometime in the future the concerns expressed by the state were possibly accommodated by both our government and the Government of the United States.

Senator MATSUNAGA. Well, as one member of this committee and of the Congress of the United States, you can rest assured that I will champion that cause if I'm still here.

Governor MOSES. Thank you very much.

Senator MATSUNAGA. President Nakayama, at various times the FSM has indicated a desire to have certain additional programs such as Farmers Home Loan extend into the compact period, at least temporarily. Do you still believe these would be useful?

President NAKAYAMA. There are certain of the programs that are useful. However, we would like our government to decide which ones should be continued on a temporary basis, with the thinking that if there is sufficient funding within the compact funding itself, that those we choose wouldn't be financed that way. And certainly, that program is useful.

Senator MATSUNAGA. And would you put it on the basis of continuation of programs upon your request, or have the programs terminate automatically initially and to have you submit a request for continuance if you so wished?

President NAKAYAMA. I would favor upon our request and in our terms.

Senator MATSUNAGA. In other words, it would continue until you asked that it be terminated?

President NAKAYAMA. That's correct.

Senator MATSUNAGA. Now, do you anticipate additional needs for technical assistance and training, especially in program administration and financial management?

President NAKAYAMA. Yes. We need continued training, especially in finance management.

Senator MATSUNAGA. This may be a rather pointed question, but are you satisfied with the efforts from Secretary Montoya to this date?

President NAKAYAMA. The short answer is yes.

Senator MATSUNAGA. Yes. And I hope Mr. Montoya is here. [Laughter.]

What is the situation with respect to cholera and leprosy in the FSM?

President NAKAYAMA. The cholera outbreak was in Truk last year, and it was on an epidemic level. This year it is endemic. And with the financial assistance that we received from the United States, Truk State is building in the villages water catchment and sanitation facilities, which are important to contain the further spread of cholera. Cholera is in Truk, and I understand it will be there. There is no way you can eradicate it unless there is good sanitation facilities.

As to the leprosy, I have been told by my health people that it is at an epidemic level. It is present in certain isolated communities in Ponape, and also in Truk, primarily in the areas outside of the state centers. In Ponape, it is in Pingelap and in Kapingimarangi. In Truk, it is present in Mama and also a small village within the state, but that is on a smaller scale.

Senator **Matsunaga**. So that, as I understand you, you do expect additional health care needs either in the fiscal year 1985 or beyond other than what was included in the administration's budget or specifically included in the compact?

President **Nakayama**. The problem is an immediate problem, and would need immediate solution. For instance, the cholera, we have to fight it at this point. The epidemic of leprosy, it is a present problem.

Senator **Matsunaga**. So, could you provide this committee with a list of the specific needs on which the committee might be able to do something even outside of the compact?

President **Nakayama**. Yes, sir.

Senator **Matsunaga**. And have you discussed with the Public Health Service making its commission offices available for service in the FSM?

President **Nakayama**. I do not have the answer to that question. I would be more than happy to provide it later.

Senator **Matsunaga**. If you have not, it might be a wise thing to do, because we seek their advice also in our legislative efforts.

How are you progressing on your economic development plan?

President **Nakayama**. We have a team which is working on a plan at this point, consisting of our own people, and also experts from the United Nations Development Program, and a specialist sponsored by the Interior Technical Assistance Program from the United States.

They are now putting together a plan which we hope to be completed by August this year. And I have before me an interim report[2] presented by that group which I would like to submit for the record, if it might serve some use here.

Senator **Matsunaga**. Yes; we would appreciate that very much.

President **Nakayama**. Thank you very much.

Senator **Matsunaga**. All right, now to Speaker Kisande Sos.

Over the years there has been some unhappiness within Truk from Faichuk and the Mortlocks over the provision of infrastructure, I understand.

Do you anticipate the economic development plans will address the needs of the outer islands?

Mr. Sos. That is correct, sir.

Senator **Matsunaga**. It will definitely?

Mr. Sos. Yes, sir.

Senator **Matsunaga**. OK. Governor Moses, you have noted a concern over the decrease in Federal support in health and education and economic development.

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[2] The interim report appears in the appendix.

Have you identified the specific programs or assistance which you would like to have continued?

Governor MOSES. No, sir.

Senator MATSUNAGA. You have not.

Governor MOSES. No.

Senator MATSUNAGA. Well, the compact contemplates additional assistance if necessary, as you know. And I'm wondering whether you plan to request of the Congress an authorization to appropriate wherever you can identify the problems?

Governor MOSES. Mr. Chairman, in addition to the President's statement earlier that he prefers that we work on this prior to submitting, I suppose I will be working with him pursuant to certain provisions of the compact and we would hope that the Congress will consider the problem. Thank you very much.

Senator MATSUNAGA. Fine. Then you will be working with President Nakayama on that. OK.

And, Speaker Nedlic, how is the construction of the airport and the dock proceeding?

Mr. NEDLIC. Thank you very much, Mr. Chairman, for asking me a question. We can say at this time that the airport is about 90-plus percent completion. It is not 100 percent. It has not been paved, there's no lighting, but I can say it's about 90-plus percent completion.

Senator MATSUNAGA. And are you satisfied that you will be able to maintain the infrastructure during the compact period?

Mr. NEDLIC. Mr. Chairman, probably at this time, I would not say I'd be satisfied, but we will try our best to maintain it and probably be seeking more assistance from the source of the United States.

Senator MATSUNAGA. Well, we certainly appreciate all of your coming from such great distance to testify before this committee.

Yes, Governor Mangefel?

Governor MANGEFEL. Mr. Chairman, if I may. I would like to say that the area that you touch upon, your last question to the Kosrae State; we will be able to maintain this infrastructure under the compact.

Senator MATSUNAGA. Yes.

Governor MANGEFEL. One of the concerns I have for the Yap State is that. We are now getting money to maintain some of this infrastructure, but as I understand it, under the compact, there is no—we would like to dicuss that fuller with your staff, if we may.

Senator MATSUNAGA. Sure.

Governor MANGEFEL. Thank you very much.

Senator MATSUNAGA. And, of course, in the interim, if you will keep us informed, keep this committee informed of any problems which may arise, then we may be able to help you. The important thing is to communicate. You have got to keep in touch. If you don't let the people here in Washington know what your problems are, we are never going to be able to do anything to help you or to resolve any problems. We have got to know what your problems are to begin with. So please keep in touch, communicate.

President NAKAYAMA. Mr. Chairman, before we finish.

Senator MATSUNAGA. Yes, Mr. President.

President **Nakayama**. For the record, an oral statement regarding Jim Berg's comments.

Senator **Matsunaga**. Fine. We would be happy to include that in the record.

President **Nakayama**. I would like for the record to indicate the understanding of our people that the United States does not have any plans for establishing bases in the Federated States, and if it ever wanted to, any land would be acquired only with the agreement of our Government pursuant to compact section 321.

It is our feeling that this should alleviate much of the concern held by some of the people of the FSM. In other words, we all know that the United States does not have any interest in establishing bases in the Federated States of Micronesia, and if it does in the future, it must negotiate through our Government to acquire the particular bases that the United States desire; in other words, the compact is not giving the United States a blanket authorization to establish bases.

Senator **Matsunaga**. Is this even within the first 15-year period?

President **Nakayama**. It is, yes.

Senator **Matsunaga**. That is your understanding?

President **Nakayama**. That is our understanding, and we want the record to reflect that.

Senator **Matsunaga**. Well, I am not too sure about that. Perhaps we ought to hear from Mr. Berg.

Is that the understanding on the part of those who represented the United States in drafting the compact?

Mr. **Berg**. Yes, Senator, it is. Any direct land-use arrangements for the United States would need to be negotiated and made a part of the compact at the present time, and any land use that the United States might want to acquire in the future could only be acquired on the basis of negotiation and mutual agreement within this case, the Government of the Federated States of Micronesia.

I would also agree with President Nakayama's point that at the present time the United States intends no military land use in the Federated States of Micronesia.

Senator **Matsunaga**. Well, you're better negotiators than we in Hawaii. [Laughter.]

We've been trying to get the Navy out of Kahoaloa for ever since the end of the war and we haven't been successful. [Laughter.]

Well, thank you, again.

We will now go to President Amata Kabua.

I believe, Amata, you are accompanied by Minister Phillip Muller, and Chief Secretary Oscar de Brum and Carl Ingram, Advisor to the President, and James A. Abernathy.

So you are all here.

We would be happy to hear from you, President Kabua.

STATEMENT OF HON. AMATA KABUA, PRESIDENT, REPUBLIC OF THE MARSHALL ISLANDS, ACCOMPANIED BY HON. PHILIP MULLER, MINISTER; OSCAR de BRUM, CHIEF SECRETARY; CARL B. INGRAM, ADVISOR TO THE PRESIDENT; AND JAMES ABERNATHY, SPECIAL PROJECTS COORDINATOR

President KABUA. Mr. Chairman, on behalf of the Government and the people of the Marshall Islands, I would like to thank this committee, yourself, for the opportunity to testify on the Compact of Free Association this afternoon.

We are here today to tell you what the compact means to us, and to seek and urge expeditious approval of the compact.

Before proceeding, Mr. Chairman, I should like to have the honor to introduce for the record the members of our delegation from the Marshall Islands. Immediately on my right is Minister Philip Muller. Immediately to my left is Chief Secretary Oscar de Brum and near him is our Cabinet Advisor, Carl Ingram, and the fartherest left here is our Special Consultant, James Abernathy.

With your permission, Mr. Chairman, I would like to ask that I should be able to submit my statement into the minutes, and at the same time ask Chief Secretary to hit the highlights of the statement.

Senator MATSUNAGA. Your statement will appear in full in the record as though presented in full.

President KABUA. Thank you very much, Mr. Chairman.

And I shall ask Chief Secretary to give the highlights and also to inform you that after he has made that statement, then we shall be very pleased to respond to any questions that you may ask of us.

Thank you very much, Mr. Chairman.

Senator MATSUNAGA. Fine; then you may proceed then, Mr. de Brum.

Mr. DE BRUM. Thank you very much, Mr. Chairman. Thank you very much, your Excellency, Mr. President.

Mr. Chairman, we share with other members who appear before this committee in saying that it has taken 18 years of sometimes very difficult negotiations with the United States to conclude the Compact of Free Association.

Progress was often made slowly, if at all. On at least one occasion, intervention from this committee was necessary to move the process forward.

Also, as divergent views within the Marshall Islands came to the forefront, they were examined and were often incorporated into the negotiating process.

In recognition of the special interests of the people of the Bikini, Enewetak, Rongelap, and Utrik, the Government of the Republic of the Marshall Islands included their representatives within its delegation to the nuclear claims negotiations.

Similarly, in recognition of the special interest of the Kwajalein people, the Government included their representatives in negotiations on the military land use agreement.

As a result, the nuclear claims agreement and the military landing agreement, as concluded, incorporates input from these Marshallese most directly affected.

Through this whole process, the Marshall Islands has consistently sought a free association with the United States which include the following: Recognition of the right of our people to adopt and amend their own constitution; recognition that sovereignty over the Marshall Islands resides in the people of the Marshall Islands and their duly constituted government; recognition that the people of the Marshall Islands possess the right of self-determination and may therefore choose independence or self-government in free association; and, recognition that the Marshall Islands may unilaterally terminate the free association.

Under the compact, as negotiated, these objectives have been met. That is not to say that the compact is a perfect document. The compact by its very nature is a document of compromises, and it is based on the mutuality of interests and the principle of reciprocity.

However, the people of the Marshall Islands believe Free Association under the Compact is a fair and equitable relationship. On September 7, 1983, the people of the Marshall Islands, by a 58 percent majority, approved the compact and its related agreements, and in October 1983, the Government of the Marshall Islands approved the compact and its related agreements pursuant to its constitutional processes.

On the Compact of Free Association, Mr. Chairman, if I may, I would like to share with you, in general terms, just what that compact means to the people of the Marshall Islands.

First and foremost, the compact recognizes that through the exercise of our sovereign right to self-determination, we have created a constitutional government, approved by the compact, and have authority and responsibility over our internal and foreign affairs. This, sir, is very important to us. We are a free and sovereign people.

Under the economic provisions of the compact, we have, for the first time, a dependable stream of funds for the implementation of income-generating development projects for the future.

With these funds we can begin to plan for the future instead of only getting by for today. We can also provide our outer islands with the infrastructure they need; such as, loading ramps for the landing craft-type vessels, and improvements to the air services we are now providing.

Under the security and defense provisions of the compact, we have the guarantee of a stable environment in which our economy can grow, and our government can mature.

Further, in recognition of the special relationship that exists between the people of the Marshall Islands and the United States, the United States has affirmed in a separate agreement the Mutual Security Agreement, that in the event of security and defense provisions of the compact expire or are terminated, the United States will treat an attack on the Marshall Islands as a danger to the United States and will take action to meet the danger.

Under this agreement, the United States will also have the authority to deny access to the Marshall Islands by the military forces of third countries.

This agreement also reaffirms the commitment of the United States to assist the Marshall Islands to achieve long-term economic advancement and self-sufficiency. These provisions of the Mutual Security Agreement will remain in effect until mutually terminated or modified.

Mr. Chairman, this is how we view the compact, and this is why we seek its expeditious approval.

Turning to the transition matters, Mr. Chairman. Although the Compact adequately provides for our future relationship with the United States, there are certain transition matters in respect to which we seek this committee's assistance; these are including: Funds for pre-1982 deficits, approximately $17 million for the Trust Territory; funds to retire medical referral debts, $4.5 million; funding for prior service benefits for those who worked for the—those Micronesians who worked for the Navy and Trust Territory Government prior to 1968, $15 million; funds to construct a new facility for the College of Micronesia School of Nursing in the Marshall Islands, $3 million; funds for the construction of a new capitol building for the Marshall Islands, a commitment of the administering authority, $7 million; funding for war claim awards, $12.5 million.

These items represent unfinished business of the United States as the administering authority under the Trusteeship Agreement.

We also believe that during at least the initial stage of free association we will be in need of technical assistance from the United States in many areas, including financial management, management of our medical referral program, and law enforcement.

In this regard, we seek the assistance of this committee in obtaining funds for these projects. We believe these projects to be worthwhile and cost effective.

In conclusion, Mr. Chairman, with the approval of the compact by the people of the Marshall Islands on September 7, 1983, and with the final acceptance of the compact as a treaty by the government of the Republic of the Marshall Islands in October 1983, the Marshall Islands has done its part and is ready to move forward into the free association with the United States.

During the 37-year history of the Trusteeship Agreement, we have—with the assistance of the Government of the United States and this committee—reached a political point—point of political, economic and social maturity which provides the basis for termination of the Trusteeship Agreement and implementation of the compact. It remains now for the United States to approve the compact.

On March 30, 1984, President Reagan submitted the compact to the Congress for approval after—I'm sorry to say—a 5-month delay. Hearings are now being held in the House of Representatives as well as here in the Senate.

After you have thoroughly reviewed the compact, as we have, and if you find it to be fair and equitable, as we have, we ask that you seek expeditious approval of the compact.

Komoltata, and thank you, sir.

[The prepared statements of President Kabua and Mayor Matthew follow:]

Office of the President
THE MARSHALL ISLANDS

STATEMENT OF PRESIDENT AMATA KABUA,
REPUBLIC OF THE MARSHALL ISLANDS,
to the
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
in respect to
THE COMPACT OF FREE ASSOCIATION

Mr. Chairman and distinguished members of this Committee:

On behalf of the Government and the people of the Marshall Islands, I would like to thank this Committee for the opportunity to testify on the Compact of Free Association (the Compact). We are here today to tell you what the Compact means to us, and to seek expeditious approval of the Compact.

However, before I go further, I would like to introduce the other members of the Marshall Islands delegation: Philip Muller, Minister in Assistance; Oscar de Brum, Chief Secretary; and Carl B. Ingram, Advisor to the President.

THE POLITICAL STATUS NEGOTIATIONS

Mr. Chairman, it has taken us 15 years of sometimes difficult negotiations with the United States to conclude the Compact of Free Association. Progress was often made slowly, if at all. On at least one occasion, intervention from this Committee was necessary to move the process forward.

Also, as divergent views within the Marshall Islands came to the forefront, they were examined and were often incorporated into the negotiating process. In recognition of the special interests of the people of Bikini, Enewetak, Rongelap and Utrik, the Government of the Republic of the Marshall Islands included their representatives within its delegation to the nuclear claims negotiations. Similarly, in recognition of the special interest of the Kwajalein people, the Government included their representatives in negotiations on the military land use agreement. As a result, the nuclear claims agreement and the military land use agreement, as concluded, incorporate input from those Marshallese most directly affected.

Through this whole process, the Marshall Islands has consistently sought a "free association" with the United States which included--

- recognition of the right of our people to adopt and amend their own constitution;

- recognition that sovereignty over the Marshall Islands resides in the people of the Marshall Islands and their duly constituted government;

- recognition that the people of the Marshall Islands possess the right of self-determination and may therefore choose independence or self-government in free association; and

- recognition that the Marshall Islands may unilaterally terminate free association.

Under the Compact, as negotiated, these objectives have been met. That is not to say the Compact is a perfect document. The Compact by its very nature is a document of compromises. However, the people of the Marshall Islands believe free association under the Compact is a fair and equitable relationship. On 7 September 1983, the people of the Marshall Islands by a 58% majority approved the Compact, and its related agreements, and in October of 1983, the Government of the Marshall Islands approved the Compact, and its related agreements, pursuant to its constitutional processes.

THE COMPACT OF FREE ASSOCIATION

Mr. Chairman, if I may, I would like to share with you, in general terms, what the Compact means to the people of the Marshall Islands.

First, and foremost, the Compact recognizes that through the exercise of our sovereign right to self-determination we have created a constitutional government, approved the Compact, and have authority and responsibility over our internal and foreign affairs. This sir, is very important to us. We are a free and sovereign people.

Under the economic provisions of the Compact, we have for the first time a dependable stream of funds for the implementation of income generating development projects. With these funds, we can begin to plan for the future, instead of only getting-by for today. We can also provide our outer islands with the infrastructure they need, such as loading ramps for landing craft type vessels, and improvements to the air service we now provide.

Under the security and defense provisions of the Compact, we have the guarantee of a stable environment in which our economy can grow, and our government can mature.

Further, in recognition of the special relationship that exists between the people of the Marshall Islands and the United States, the United States has affirmed in a separate agreement, the Mutual Security Agreement, that in the event the security and defense provisions of the Compact expire or are terminated, the United States will treat an attack on the Marshall Islands as a danger to the United States, and will take action to meet the danger. Under this agreement, the United States will also have the authority to deny access to the Marshall Islands by the military forces of third countries. This agreement also reaffirms the commitment of the United States to assist the Marshall Islands to achieve long term economic advancement and self-sufficiency. These provisions of the Mutual Security Agreement will remain in effect until mutually terminated or modified.

Mr. Chairman, this is how we view the Compact, and this is why we seek its expeditious approval.

THE MILITARY USE AND OPERATING RIGHTS AGREEMENT (MUORA)

Mr. Chairman, as I mentioned above, the nuclear claims agreement and the military land use agreement are of great interest and significance to many Marshallese. For this reason, I would like to discuss these agreements in greater detail.

The main features of the MUORA are as follows:

1. For the sum of $9.0 million annually ($7.1 million from Section 211 funds and $1.9 million from Section 213 funds), the United States for an initial term of 15 years will have free access to and unrestricted control of designated defense sites within Kwajalein Atoll, and the United States will control entry and movement of people within the mid-corridor as described in the MUORA.

2. At the option of the United States, its use rights on Kwajalein Atoll can be extended another 15 years. Annual payments of $9.0 million would continue, and there would be a one time payment of $2.5 million. Under an earlier version of this agreement, the United States could extend its use rights 35 years. The option term was shortened at the request of Kwajalein landowners.

3. In the exercise of its use rights, the United States must use its best efforts to avoid harm to the people, environment and commerce of the Marshall Islands.

4. Should the United States need additional land within the Marshall Islands, the United States may request of the Government of the Marshall Islands that it provide such land by lease or other arrangements. The Government of the Marshall Islands will sympathetically consider any such request and shall provide a prompt response.

5. There shall continue to be a Community Relations Council (CRC) with representatives from the Government of the United States, the Government of the Marshall Islands, and the Kwajalein Atoll community. The CRC shall identify and consider all matters affecting relations between the defense site and the Kwajalein community, and shall recommend action as appropriate.

6. Those Marshallese now working on the defense site will continue to be employed at United States pay scales, and all Marshallese employees, including new hires, shall receive equal pay for equal work.

The sums received by the Government of the Marshall Islands under the MUORA shall, by a separate agreement entered into between the Government of the Marshall Islands and the Kwajalein landowners, be passed through to the landowners. Under that agreement, the Kwajalein landowners must during the first fifteen years dedicate $2.84 million annually to development projects. The remainder will be available for use payments to the landowners. Should the United States decide to extend its use of Kwajalein an additional 15 years, the Kwajalein landowners must dedicate $1.9 million of the $9 million they will receive annually to development projects. The remaining $7.1 million will be available for use payments. Over 30 years, this will result in $71.1 millions for development projects for Kwajalein Atoll alone, and $198.9 million in land use payments for the landowners. Both sums will, in part, be adjusted for inflation.

THE NUCLEAR CLAIMS AGREEMENT

Mr. Chairman, between 1947 and 1958 the United States detonated 66 nuclear weapons at Bikini Atoll and Enewetak Atoll, contaminating to some extent all of the atolls in the northern Marshall Islands, causing the dislocation of 167 Bikinians and

134 Enewetakese, and subjecting other Marshallese, including 253 Rongelapese and Utrikese, to dangerously high levels of radiation.

On 25 June 1983, we were able to renegotiate an agreement with the Reagan administration to settle claims arising out of the United States Nuclear Testing Program. This agreement was renegotiated when an earlier version, concluded in May of 1982, had proven to be unacceptable to the people. The main features of the renegotiated nuclear claims agreement are as follows--

1. On the effective date of the Compact, the United States will pay to the Marshall Islands $150 million. This sum will be invested by the Marshall Islands in a perpetual fund that will yield $18 million per year for each of the first 15 years. The fund and its earnings can not, without the consent of the Governments of the United States and the Marshall Islands, be used or pledged for any purpose other than to address the unique needs of the people of the Marshall Islands as a result of the nuclear testing program.

2. From fund earnings in the first 15 years, the Government of the Republic of the Marshall Islands shall receive $2 million annually to purchase from the United States services to assist the government to include, in its health-care system, health-care programs and services

related to consequences of the nuclear testing program and contemplated in United States Public Law 95-134 and United States Public Law 96-205.

3. During the first 15 years of the fund, the people of Bikini, Enewetak, Rongelap and Utrik will receive a guaranteed total of $183,750,000 in quarterly payments allocated as follows:

   - to the people of Bikini: $75 million;
   - to the people of Enewetak: $48.75 million;
   - to the people of Rongelap: $37.5 million; and
   - to the people of Utrik: $22.5 million.

4. The local government council for each of the above atolls will be the distribution authority for the sums allocated to its people. These funds are to be used to compensate the people for loss or damage to property and person as a result of the nuclear testing program, and can be used for projects such as supplemental feeding programs, rehabilitation of contaminated lands, resettlement, education and the like. Pursuant to an agreed minute, the people of Enewetak intend to set aside $5.0 million of the funds they shall receive to provide continuing funding for the agricultural and food supplement programs they now

receive from the United States.

5. Under the provisions of the nuclear claims agreement, the Government of the Marshall Islands can contract with the United States for the continuation of the Enewetak agriculture and food supplement programs and for the continuation of the Bikini food supplement program. Should the people of Enewetak or Bikini decide they wish to dedicate a portion of their claims funds for the continuation of such programs, it is the intent of the Government of the Marshall Islands to enter into the necessary contractual arrangements with the United States on an reimburseable basis.

6. Also during the first 15 years of the Fund, a Claims Tribunal will be established for the adjudication of uncompensated claims. A total of $45.75 million will be available to the Tribunal for payment of any such claims of the people of the above-mentioned atolls or any other Marshallese. The Tribunal will be established by the Government of the Marshall Islands, but will be independent of its executive and legislative branches.

7. After the first 15 years, it is contemplated that the original sum of $150 million will remain intact and that up to 75% of the interest earned by the fund will be available to the Claims Tribunal to pay uncompensated claims, if

any. Interest earned by the fund, but not required to make the above-mentioned payments, shall be made part of the fund or used by the Government of the Marshall Islands for other programs and services for the people of the Marshall Islands as their unique needs and circumstances resulting from the nuclear testing program may require, including the continuation of health and radiological monitoring programs.

8. The agreement will settle all claims of the Marshallese people against the United States as a result of the nuclear testing program, and no United States court will have jurisdiction to entertain such claims. Claims now pending in the United States courts will be dismissed.

The present nuclear claims agreement is a significant improvement over the earlier one which provided only $150 million over 15 years. The new agreement provides $420 million over the same period of time. For those 554 plus Marshallese and their descendants who suffered loss or damage to property and person as a result of the United States Nuclear Testing Program, this settlement compares very favorably to the settlement obtained by United States serviceman claiming injuries as a result of exposure to agent orange, and it compares favorably to a court judgment obtained by families of those exposed to radiation from nuclear tests within the United States. According to the 21 May

1984 issue of Time Magazine, a $180 million trust fund will be used to compensate an estimated 50,000 to 60,000 servicemen exposed to agent orange. According to that same issue of Time Magazine, the families of 10 now deceased leukemia victims shall receive $2.66 million for the death of their family member as a result of the Nevada nuclear testing program.

A segment of those Marshallese affected by the nuclear testing program contends that the level of compensation under the revised nuclear claims agreement is not sufficient. We ask that you consider these claims, although we believe that the revised agreement is not only comparatively a good settlement, it is fair, and the best we could negotiate with the Administration.

With conclusion of the nuclear claims agreement in June of 1983, the Compact of Free Association and its related agreements were put to a plebiscite of the people on 7 September 1983.

THE PLEBISCITE

The plebiscite was preceeded by an extentive education program which included frequent radio broadcasts and 129 community meetings sponsored by a non-partisan plebiscite task force. These meetings were attended by 4,495 Marshallese, about 30 percent of the estimated number of eligible voters. The task force teams visited almost all of the populated centers in the Marshall Islands, as well as five cities in the United States.

During the plebiscite program pro-compact and anti-compact forces also made radio broadcasts, issued newspaper advertisements and held rallies throughout the Marshall Islands. The Government of the Marshall Islands can say with confidence that everyone who wanted to learn about the Compact of Free Association and its related agreements had an opportunity to do so, and many did.

On 7 September 1983, over 10,000 Marshallese, or 60 percent of the eligible voters, participated in the plebiscite. In response to Part 1 of the plebiscite ballot, the Compact and its related agreements were approved by a 58 percent majority. The results represent a free and informed sovereign act of self-determination by the people of the Marshall Islands, and provide the basis for termination of the Trusteeship and implementation of the Compact. In response to Part 2 of the plebiscite ballot, less than 30 percent of the voters indicated a preference for any political status other than free association (in the event free association was not approved). Moreover, less than five percent of the voters indicated a preferrence for either independence or commonwealth. Those who now advocate commonwealth or independence for the Marshall Islands do not have the support of the people. The people of the Marshall Islands have spoken, and they have chosen free association as set forth in the Compact.

TRANSITION MATTERS

Although the Compact adequately provides for our future relationship with the United States, there are certain transition matters in respect to which we seek this Committee's assistance, including--

- funds for pre-1982 deficits, approximately $17 million for the Trust Territory;
- funds to retire medical referral debts, $4.5 million;
- funding of prior service benefits for those who worked for the Navy and the Trust Territory Government prior to 1968, $15 million;
- funds to construct a new facility for the College of Micronesia Nursing School in the Marshall Islands, $3 million;
- funds for the construction of a new capitol building for the Marshall Islands, $7.0 million; and
- funding for war claim awards, $12.5 million.

These items represent unfinished business of the United States as the Administering Authority under the Trusteeship Agreement.

We also believe that during, at least, the initial stages of free association we will be in need of technical assistance from the United States in many areas, including financial management, management of our medical referral program, and law enforcement.

In this regard, we seek the assistance of this Committee in obtaining funds for these projects. We believe these projects to be worthwhile and cost effective.

CONCLUSION

Mr. Chairman, with approval of the Compact by the people of the Marshall Islands on 7 September 1983, and with final acceptance of the Compact as a treaty by the Government of the Republic of the Marshall Islands in October of 1983, the Marshall Islands has done its part and is ready to move forward into free association with the United States. During the 37 year history of the Trusteeship Agreement, we have, with the assistance of the Government of the United States and this Committee, reached a point of political, economic and social maturity which provides the basis for termination of the Trusteeship Agreement and implementation of the Compact. It remains now for the United States to approve the Compact.

On 30 March 1984, President Reagan submitted the Compact to the Congress for approval after a five month delay. Hearings are now being held in the House of Representatives as well as here in the Senate.

After you have throughly reviewed the Compact as we have, and if you find it to be fair and equitable as we have, we ask that you seek expeditious approval of the Compact.

Komoltata.

REPUBLIC OF THE MARSHALL ISLANDS
MAJURO, MARSHALL ISLANDS 96960 • CABLE: REPMAR

STATEMENT OF THE HONORABLE HAROLD MATTHEW
MAYOR OF THE UTRIK ATOLL LOCAL GOVERNMENT COUNCIL
and
THE HONORABLE DONALD MATTHEW
NITIJELA REPRESENTATIVE FOR UTRIK ATOLL
to the
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
in respect to the
SECTION 177 AGREEMENT

Dear Mr. Chairman and distinguished members of the Committee, my name is Harold Matthew and I am the mayor of the Utrik Atoll Local Government Council. With me is Senator Donald Matthew, representative of the people of Utrik Atoll to the Marshall Islands Nitijela. On behalf of the people of Utrik Atoll we would like to express to you our appreciation for this opportunity to submit testimony on the Compact of Free Association Section 177 Agreement.

As you know the people of Utrik, like the people of Bikini, Enewetak, Rongelap, and other Marshallese, were directly affected by the United States Nuclear Testing Program conducted in the

Marshall Islands from 1947 through 1958.

On 1 March 1954, over 150 Utrik people were exposed to dangerously high levels of radiation from the fall-out of the "Bravo Shot". Our people were given no warning. We did not know to take shelter. Two days after the Bravo Shot the United States Navy evacuated us from Utrik Atoll to Kwajalein Atoll. While on Kwajalein we experienced vomitting, fatigue and other radiation related disorders. Three months later we were returned to Utrik Atoll.

Since our return we have suffered thyroid abnormalities for which we have received treatment, including surgery. Many of our people continue to take medication under medical supervision.

Last March, during the regular annual visit of Department of Energy doctors, four more thyroid abnormalities were identified. These new cases will require further medical treatment, possibly operations.

The United States Government has in the past recognized the suffering we have incurred and has made the following compassionate compensation to the people of Utrik, for which we are grateful:

- $25,000 for those requiring thyroid operations; and
- $1,000 for the residents of Utrik Atoll who were there on 1

March 1954 during the Bravo Shot.

In addition to the above compensation, we have received regular medical examinations and treatment for which we are also grateful.

We are here today to testify in support of the Compact of Free Association which will include:

1. continuation of the radiological monitoring and health programs;
2. compensation to the people of Utrik Atoll in the amount of $22.5 million dollars for the hardships they suffered; and
3. the establishment of a claims tribunal system to which the people of Utrik can go and obtain additional compensation for any claims which may have not been fully compensated.

Our support for expeditious approval of the Compact of Free Association, echoes the support of people of Utrik, who in the 7 September 1983 Plebiscite on Free Association voted in favor of the Compact by a 73% majority. In that plebiscite the people of the Marshall Islands by a 58% majority also approved the Compact. We, the people of Utrik Atoll, have with other people of the Marshall Islands joined our hands together and have through the exercise of our sovereign right to self-determination expressed our desire to terminate the Trusteeship and enter into free association with the United States. We speak with the same voice, and we humbly urge you, Mr. Chairman, to seek approval of the Compact of Free Association. We, the people of the Marshall Islands, and our democratically elected government have done our part, and we hope that you will do yours.

Thank you,

Harold Matthew
Mayor, Utrik Atoll
Local Government Council

Donald Matthew
Senator from Utrik to the
Marshall Islands Nitijela

Senator MATSUNAGA. Thank you very much, Mr. de Brum.

Do you have any concern that the compact and its subsidiary agreements will not guarantee the security of the Marshalls so that you will be able to develop in peace?

President KABUA. Mr. Chairman, we do not have that concern.

Senator MATSUNAGA. And do you feel that there is any need for additional training and technical assistance in areas of program administration and financial development?

President KABUA. Mr. Chairman, yes.

Senator MATSUNAGA. You do.

President KABUA. Yes.

Senator MATSUNAGA. And are you satisfied with the efforts by Secretary Montoya to provide such assistance?

President KABUA. Mr. Chairman, we are very much satisfied and we want more of it. [Laughter.]

Senator MATSUNAGA. That's a little contradictory, isn't it? You're satisfied, but you want more. [Laughter.]

Well, I assume that Secretary Montoya is doing a good job then. Do you feel that you may need, at least as a transition matter, additional assistance in the areas of health and education?

President KABUA. Yes, sir, we will need some assistance along those areas.

Senator MATSUNAGA. And if for any reason the settlement under section 177 proves inadequate to meet the health care needs of the four named atolls, you don't think that your new sovereignty will keep you from informing the Congress of the United States?

President KABUA. No. I think with the Compact of Free Association we should appropriately inform the United States that we may need more money along those lines.

Senator MATSUNAGA. So your pride will not keep you from the need then.

President KABUA. If there is a need for it, we will ask for more.

Senator MATSUNAGA. Would you support additional efforts to assist in the cleanup of Bikini and Engebi?

President KABUA. Yes, Mr. Chairman, we will support that.

Senator MATSUNAGA. What is the status of your economic development plan today?

President KABUA. We have two United Nations experts there, and in addition there are two others—four of them working, and I was given to understand that the plan is near completion and it certainly will be submitted to this committee and the U.S. Congress and Government, as well as our Government in the very near future.

Senator MATSUNAGA. And for the benefit of those who are concerned, do you plan to address the needs of the outer islands?

President KABUA. Indeed, sir, we address the needs of the outer islands.

Senator MATSUNAGA. Fine. I think you have answered the questions.

It is now 2:15. I am sure that those of you who have been waiting must be starved by now, you haven't had time for lunch. And I, myself, haven't had lunch, and I have some people from Hawaii waiting for me at lunch. I hope they haven't quite yet finished the eating so I can join them.

I will declare a recess and hopefully, someone else will be here to chair the next part of the committee meeting. If not, I guess I will have to beg off somehow and be back at—shall we make it 3 o'clock.

So the committee stands in recess until 3 o'clock this afternoon.

[Whereupon, at 2:15 p.m., the committee recessed, to reconvene at 3 p.m.]

AFTERNOON SESSION

Senator **Matsunaga**. The committee will please come to order.

Our next witnesses are Senator Carl Heine and Senator Chuji Chutaro.

Senator Heine, we will be very happy to hear from you.

STATEMENT OF HON. CARL HEINE, SENATOR, REPUBLIC OF THE MARSHALL ISLANDS

Senator **Heine**. I have submitted a written statement, and I hope it will be made a part of your record. In the interest of time, I will try to be very brief with my presentation here this afternoon.

Senator **Matsunaga**. Fine. I will appreciate that very much. Your statement will appear in full in the record as though presented, and we will appreciate your summarizing that statement.

Senator **Heine**. Thank you very much, Mr. Chairman.

In the closing statement of Ambassador Fred Zeder, he mentioned that one of the objective goals of the administering authority to terminate the trusteeship agreement is to improve the U.S. image in the region of the Pacific and in the world community.

Our concern here this afternoon, Mr. Chairman, is not so much with the image but with substantive problems and quality of life that the people of the Marshall Islands would live under the compact if it is approved by this Congress.

I represent the group known as the Marshall Islands Coalition Party—and there are other members here this afternoon that may also testify, but I am speaking on their behalf here this afternoon.

We opposed the compact, Mr. Chairman, and will have to ask this Congress not to approve it. Our objections are many, but let me summarize some of our major objections.

We had completed a plebiscite on the compact of free association not too long ago, and I was in New York for the trusteeship council last week, and I brought up the problem again with the plebiscite report, but the U.N. people were not interested in questioning that particular problem.

But let me summarize some of the problems that I feel should become part of the record. The U.N. report on the plebiscite was very inaccurate and inconsistent on many parts. There were irregularities that were not reported; there were some of these facts that the U.N. commissioner failed to incorporate it in his report, the fact that funding for the Political Education Program in the Marshalls was funded by the Department of the Interior, and the fact that the opposition parties in the Marshall Islands were not given adequate opportunity to express their feeling on the compact of free association; they were given no access to the government-controlled radio station in the Marshalls to express their feelings on the compact, and video tapes were made by the administering authority which were shown throughout the islands in the remote communities and villages showing President Reagan speaking to the people on his feelings regarding the compact of free association.

In his statement last month to the Congress, President Reagan submitted the compact for U.S. Congress review. He also made the statement that the compact had been approved by every sector of the Marshallese people. This statement is highly misleading, Mr. Chairman, because no member of the Coalition Party or the party I represent has ever had any opportunity or any significant role in the negotiation of the Marshall Islands compact during these past 14 years. I think those should become a part of the record of this Congress, Mr. Chairman.

Furthermore, Mr. Chairman, we had no opportunity to participate in the overall economic development plan of the Marshall Islands which I understand will be submitted to this Congress fairly soon for review. No member of our party was also invited to participate in this economic development plan.

On numerous occasions, the visits of important people from the administering authority we have tried in vain, Mr. Chairman, to have meetings with these people—including Ambassador Zeder, and we have not been able to attract their interest, and we feel that we have been left out of a lot of these channels and opportunities to discuss some of our problems with them.

Our group in the Marshall Islands is now entertaining the idea of commonwealth status. My feeling about the compact and the decision of the Marshallese people and the U.S. Government in post-trusteeship of the Marshalls is that it would be very difficult for our people to live under the compact in its present form if it's approved.

There is no guarantee in the compact that the outer island people of the Marshall Islands will be given adequate consideration in the distribution of wealth; there is also no guarantee for that.

For all these reasons, Mr. Chairman, we have to voice our objections to the compact in its present format.

We support the concept of our commonwealth, and it is very difficult for me to understand why the administering authorities has not been willing to sit and talk with members of our party when what we want is a closer relationship—a relationship that is much closer to the United States than the compact of free association; a relationship that, in my opinion, will assure the American military interests in the Marshall Islands much more so than they are under the present compact of free association.

With this statement, I thank you, Mr. Chairman, for this opportunity to speak.

Senator MATSUNAGA. Thank you very much, Senator. We shall now hear from Senator Chutaro.

STATEMENT OF HON. CHUJI G. CHUTARO, SENATOR, REPUBLIC OF THE MARSHALL ISLANDS

Senator CHUTARO. Thank you, Mr. Chairman.

I'm sure that the staff of the committee has already given you the written report that I had prepared for today.

What I'm trying to do here, Mr. Chairman, if I may, I'd like to summarize in my own writing what I had in the whole long submitted report earlier.

Senator MATSUNAGA. You may do so, and your written statement will appear in full in the record as though presented in full.

Senator CHUTARO. Thank you, Mr. Chairman.

I am Chuji Chutaro, one of the senators in the Marshall Islands Parliament.

Mr. Chairman, it is an honor for my colleagues and me to appear before you. And, indeed, we want to thank you for this opportunity to speak to you on behalf of the constituents, our constituents throughout the Marshall Islands.

We represent the political organization known as the Coalition Party. This party is one of the two political parties in the Republic of the Marshall Islands.

It was because of this organization that the compact received only 58 percent of those who voted during the plebiscite last September.

Mr. Chairman, before I go on with our statement, I would like very much to state for the record that nothing in our presentation should be interpreted in any way as a reflection of our dislike or disapproval for the compact of free association as it has been negotiated and approved by the people of the federated states of Micronesia. We have great respect and admiration for the people of the federated states of Micronesia and we want to wish them a great success now and in the years to come.

Mr. Chairman, if the 58 percent margin in the recent plebiscite is judged by that authority to be the single most important criteria for pushing the compact, especially when most of the voters were not fully informed of the compact and it's subsidiary agreements, then we must ask ourselves: Is the government of the Marshall Islands and the administering authority fulfilling their moral and legal responsibilities?

Mr. Chairman, for your information and the committee's information, as my colleague has repeated, no members of the minority party was involved during all the years of negotiation.

Our basic concern and, of course, our basic opposition is precipitated by the fact that democracy, as it is known and understood at its best in the United States, often exists only on paper, but it does not exist out there, especially in our Third World country.

Mr. Chairman, all of the day we sat here and we hear about all of the big chunks of money that will be given to our people. We heard about the big structures and all the infrastructure that will be built for our people, but let me turn this a little bit, Mr. Chairman, to the word "democracy" itself, as you cherish it, value it, and respect it; it is the democracy based on the respect and the rights of each individual that our political group deeply cherished for the people of the Marshall Islands, it is this type of respect for points of views that we have learned during all those years under your care, these are the things that we value—at least some of us—who believe that for democracy to work, all points of views on an issue, both sides must be permitted to be heard and discussed freely. This is not being done in the Republic of the Marshall Islands.

We have a democracy, but it is not real. If the United States were to approve the present Compact of free association at this time, our Coalition Party feels that in the long-run, neither democracy, nor the protection of the rights of the individual would be ensured. Consequently, neither the interest of the Republic of the Marshall Islands, nor those of the U.S. Government will be served.

We believe that if you and the others in the U.S. Congress understood where we are in our development as a democracy, you should probably go slow in pushing the compact, and perhaps even want to consider and support those of us who believe we are not ready for free association, but instead will need a commonwealth with the United States of America.

Under the commonwealth, Mr. Chairman, as you well know, and everybody else in this room knows, we will be members of your family and protected by your laws and have access to your legislative and judicial system, at the same token, the Marshall Islands and its strategic values will be part of the United States of America.

Thank you, Mr. Chairman, for this opportunity.

[The prepared statements of Senator Heine and Senator Chutaro follow:]

PREPARED STATEMENTS OF SENATOR HEINE AND SENATOR CHUTARO

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES. IT IS AN HONOR FOR MY COLLEAGUE AND ME TO APPEAR BEFORE YOU. WE WANT TO THANK YOU FOR THIS OPPORTUNITY TO SPEAK TO YOU ON BEHALF OF OUR CONSTITUENTS FROM THE FOLLOWING ATOLLS: KWAJALEIN, RONGELAP, LIB, LAE, JALUIT, EBON, MILLI, WOTJE AND OTHERS IN VARIOUS ATOLLS AND ISLANDS THROUGHOUT THE MARSHALL ISLANDS. THESE ATOLLS AND PEOPLES ARE REPRESENTED BY THE POLITICAL ORGANIZATION KNOWN AS THE COALITION PARTY. THIS PARTY IS ONE OF THE TWO POLITICAL PARTIES IN THE REPUBLIC OF THE MARSHALL ISLANDS. IT WAS BECAUSE OF THIS ORGANIZATION THAT THE COMPACT RECEIVED ONLY 58% OF THOSE WHO VOTED DURING THE PLEBISCITE LAST SEPTEMBER.

MR. CHAIRMAN, BEFORE WE GO ON WITH OUR STATEMENT, WE WOULD LIKE VERY MUCH TO STATE FOR THE RECORD THAT NOTHING IN OUR PRESENTATION SHOULD BE INTERPRETED IN ANY WAY AS A REFLECTION OF OUR DISLIKE OR DISAPPROVAL FOR THE COMPACT OF FREE ASSOCIATION AS IT HAS BEEN NEGOTIATED AND APPROVED BY THE PEOPLE OF THE FEDERATED STATES OF MICRONESIA. WE HAVE GERAT RESPECT AND ADMIRATION FOR THE PEOPLE OF THE FEDERATED STATES OF MICRONESIA AND WE WANT TO WISH THEM A GREAT SUCCESS NOW AND IN THE YEARS TO COME.

FIRST AND FOREMOST IN OUR MINDS IS, OF COURSE, THE COMPACT OF FREE ASSOCIATION AND ITS POSSIBLE APPROVAL BY THIS COMMITTEE, THE U.S. CONGRESS AND SUBSEQUENT TERMINATION BY THE U.N. SECURITY COUNCIL. WE RESPECTFULLY OPPOSE BOTH OF THESE DEVELOPMENTS, AT LEAST, AT THIS TIME.

THESE PAST 14 YEARS OF NEGOTIATIONS SPEAK LOUDER THAN WE CAN TELL THIS COMMITTEE. WE ARE SORRY TO INFORM THE COMMITTEE THAT THE FINAL PRODUCT -- THE PROPOSED COMPACT OF FREE ASSOCIATION BETWEEN THE UNITED STATES AND THE REPUBLIC OF THE MARSHALLS IS NOT ONLY UNACCEPTABLE BUT, WE AS LAYMEN, THINK IT IS A VIOLATION OF ARTICLE 6 OF THE TRUSTEESHIP AGREEMENT, AND IMMORAL FOR THE FOLLOWING REASONS:

1. MANY MARSHALLESE HAVE BEEN CONTINUALLY EXPOSED TO DANGEROUSLY HIGH LEVELS OF RADIATION AS A RESULT OF NUCLEAR WEAPONS TESTING PROGRAMS -- CARRIED OUT BY THE UNITED STATES BEGINNING IN 1946. EXPOSURES TO RADIATION HAVE CAUSED MANY MARSHALLESE TO SUFFER PERMANENT AND IRREVERSIBLE PHYSICAL INJURY AND DISEASE AS WELL AS MENTAL ANGUISH, PSYCHIC IMPAIRMENT AND MENTAL PAIN THAT HAS ALTERED MANY MARSHALLESE' ABILITY TO LEAD A NORMAL LIFE. IN SOME CASES INJURIES AND DISEASES HAVE RESULTED IN DEATH. ARTICLE 6 OF THE TRUSTEESHIP AGREEMENT STATES IN PART:

> "IN DISCHARGING ITS OBLIGATIONS UNDER ARTICLE 76 OF THE U.N. CHARTER, THE ADMINISTERING AUTHORITY SHALL PROMOTE THE RIGHTS AND FUNDAMENTAL FREEDOMS OF ALL ELEMENTS OF THE POPULATION WITHOUT DISCRIMINATION, PROTECT THE HEALTH OF THE INHABITANTS.."

WE RECOGNIZE THE ROLE OF THE UNITED STATES IN THE MARSHALLS NOT JUST IN TERMS OF LEGAL AND MILITARY INTERESTS, BUT ALSO OF ITS MORAL OBLIGATION. WE THINK IT IS MORALLY WRONG FOR THE UNITED STATES TO HAVE CAUSED EXTENSIVE DAMAGE TO PROPERTY, ENVIRONMENT AND THE HEALTH AND LIVES OF THE PEOPLE, ONLY TO PASS ON THE REMEDIES TO SOMEONE ELSE.

2. UNDER THE COMPACT, THE ADMINISTERING AUTHORITY AND THE MARSHALLESE NEGOTIATORS HAVE AGREED TO THE ESPOUSAL SECTION OF THE COMPACT OF FREE ASSOCIATION. IN PART IT STATES:

> "ALL CLAIMS, PAST, PRESENT AND FUTURE, OF THE GOVERNMENT, CITIZENS AND NATIONAL OF THE MARSHALL ISLANDS WHICH ARE BASED UPON, ARISE OUT OF, OR ARE IN ANY WAY RELATED TO THE NUCLEAR TESTING PROGRAM, AND WHICH ARE AGAINST THE UNITED STATES ARE FINAL AND DISMISSED UPON THE FINAL APPROVAL OF THIS COMPACT."

THIS MEANS THAT IF THE COMPACT IS APPROVED, PEOPLE GIVE UP THEIR RIGHT TO SUE FOR FAIR COMPENSATION IN THE COURTS OF THE UNITED STATES.

JONATHAN M. WEISGALL, ATTORNEY FOR BIKINI PEOPLE, TOLD THE U.N. TRUSTEESHIP COUNCIL LAST WEEK: "THE ADMINISTERING AUTHORITY IS A TRUSTEE DEALING WITH ITS BENEFICIARY. THE LAW RECOGNIZES THE SPECIAL PROBLEMS IN SUCH A SITUATION, AND IMPOSES SPECIAL OBLIGATIONS OF FIDELITY ON THE TRUSTEE TO ACT FAIRLY AND RESPONSIBLY. THE ADMINISTERING AUTHORITY IS WALKING AWAY FROM THOSE RESPONSIBILITIES AND CLOSING THE DOORS OF ITS COURTS ON ITS BENEFICIARY.

IF BIKINI, AND OTHER ATOLLS, HAD BEEN DEVASTATED BY A NATURAL DISASTER, THE U.S. OBLIGATION UNDER THE TRUSTEESHIP AGREEMENT WOULD BE CLEAR: TO TAKE WHATEVER STEPS WERE NECESSARY TO ASSIST THE PEOPLE. BUT INSTEAD THE DAMAGE IS THE RESULT OF THE UNITED STATES' OWN ACTS OF DESTRUCTION. DOES THE OBLIGATION TO PROTECT AND PRESERVE DISAPPEAR? DOES THE TRUSTEESHIP AGREEMENT OBLIGE THE UNITED STATES TO SAFEGUARD THESE LANDS UNLESS IT CHOOSES TO DESTROY THEM?" WE HUMBLY REQUEST THAT THIS COMMITTEE SHOULD NOT LOOK UPON SUCH AGREEMENTS PASSIVELY.

3. WE CONTEND THAT THE ADMINISTERING AUTHORITY'S ATTEMPT TO TERMINATE THE TRUST AGREEMENT BY VIRTUE OF A NARROW PLEBISCITE VOTE IS MORALLY QUESTIONABLE AND CONTRARY TO THE AMERICAN SENSE OF SOCIAL JUSTICE, ESPECIALLY WHEN MOST OF THE VOTERS WERE NOT FULLY INFORMED OF THE COMPACT AND ITS SUBSIDIARY AGREEMENTS.

OUR OPPOSITION IS PRECIPITATED AT THIS TIME BY THE ADOPTION OF A COMPACT OF FREE ASSOCIATION, PASSED AND APPROVED BY ONLY A SMALL MAJORITY OF THE PEOPLE OF THE MARSHALL ISLANDS, WHOSE EFFECT WILL BE TO SOLIDIFY THE POWER OF THE MAJORITY, WHILE DENYING MINORITY RIGHTS AND INTERESTS.

AN AMERICAN SCHOLAR, INIS L. CLAUDE, JR., HAS PUT IT IN THE FOLLOWING TERMS, ABOUT A SMALL MAJORITY RULE:

> "MAJORITY RULE WORKS ONLY WHEN THE MINORITY HAS SUCH CONVICTION IN THE ULTIMATE REASONABLENESS OF THE MAJORITY AND MINORITY INTERESTS THAT IT CAN AFFORD TO RESPECT THE RIGHT OF THE MAJORITY TO RULE WITHOUT UNDUE OBSTRUCTION . . . INDEED, MAJORITY RULE HAS NO VALID CLAIM OF LEGITIMACY APART FROM THE EXISTENCE OF A BASIC MORAL CONSENSUS."

SUCH A BASIC MORAL CONSENSUS IN THE MARSHALL ISLANDS TODAY IS NONEXISTENT.

IN HIS MESSAGE TO THE U.S. CONGRESS, PRESIDENT REAGAN STATED THAT THE COMPACT OF FREE ASSOCIATION HAS BEEN APPROVED IN THE MARSHALL ISLANDS BY AN "IMPRESSIVE VOTE," NO PROFESSIONAL POLL TAKERS WILL CALL 58 PERCENT VERSES 42 PERCENT IMPRESSIVE. FURTHERMORE, THE PRESIDENT WENT ON, THE COMPACT WAS NEGOTIATED BY ALL FACTIONS OF THE MARSHALLESE PEOPLE. NOT SO. NO MEMBERS OF THE MINORITY PARTY WAS INVOLVED IN ANY SIGNIFICANT WAY DURING

ALL THE YEARS OF NEGOTIATIONS. THESE STATEMENTS ARE HIGHLY MISLEADING. THE CLAIM OF THE MAJORITY ON THE COMPACT VOTING AND TO PUT IT BEFORE THE U.S. FOR ITS APPROVAL AND TO REQUEST TO THE U.N. TERMINATION OF THE TRUST IS HIGHLY QUESTIONABLE. WHAT THE MARSHALLESE VOTERS HAVE DONE IN APPROVING THE COMPACT IS TO LEGITIMIZE THE ROLE AND THE POSITION OF THE UNITED STATES IN A POST TRUSTEESHIP MARSHALLS. THE U.S. GOVERNMENT WILL HAVE A STRONGER MILITARY STAND IN THE MARSHALLS WITH ACCOUNTABILITY TO NO ONE IN THE INTERNATIONAL COMMUNITY.

4. WE ARE SORRY TO STATE TO THIS COMMITTEE ON ENERGY AND NATURAL RESOURCES THAT THE "REPORT ON THE U.N. VISITING MISSION TO OBSERVE THE PLEBISCITE IN THE MARSHALL ISLANDS" CONTAINED INACCURATE STATEMENT AND OBSERVATIONS. IT FAILS TO REPORT A NUMBER OF VOTING IRREGULARITIES THAT OCCURRED DURING THE PLEBISCITE.

5. THAT THE COMPACT OF FREE ASSOCIATION AND ITS SUBSIDIARY AGREEMENTS ARE IN GREAT DISPUTE IS WITHOUT QUESTION. SECTION 177 IS A MAJOR SOURCE OF PROBLEMS, EVEN OUR OWN PRESIDENT, AFTER SIGNING THAT SECTION IN HONOLULU IN 1982, WHILE HE WAS UNDER QUESTIONING IN OUR OWN PARLIAMENT, SAID HE HAD TO ADMIT THAT HE "DID NOT KNOW WHAT HE WAS SIGNING AS HE WAS SICK AND WITHOUT HIS ADVISORS." IS IT RIGHT, MORALLY OR LEGALLY, TO IMPOSE SECTION 177 ON A PEOPLE WHO DO NOT UNDERSTAND ITS IMPLICATIONS? CAN THE MARSHALLESE LIVE IN HARMONY AFTER THE TRUSTEESHIP AGREEMENT IS TERMINATED?

6. EDUCATION AND HEALTH ARE MAJOR REQUIREMENTS OF THE TRUSTEESHIP AGREEMENT. TODAY, THE STANDARD OF EDUCATION IN THE MARSHALLS SINCE THE NEW CONSTITUTIONAL GOVERNMENT TOOK OVER FIVE YEARS AGO IS A NATIONAL DISASTER -- A STUDENT COMPLETING THE NINTH GRADE IN OUR COUNTRY WOULD BE CONSIDERED TO HAVE ACQUIRED THE EQUIVALENT LEVEL OF EDUCATION OF A FIFTH-GRADE STUDENT IN THE UNITED STATES.

7. IN THE AREA OF HEALTH, WE HAVE STANDARD THAT IS NON-EXISTENT ANYWHERE ELSE. PEOPLE ARE DYING BECAUSE THERE IS NO MEDICINE. SIMPLE NON-PRESCRIPTION DRUGS LIKE ASPIRIN ARE UNAVAILABLE. OUTER ISLAND DISPENSARIES ARE WITHOUT NEEDED STAFF AND MEDICINE. WE MAY SOON BE PREVENTED FROM SENDING REFERRAL PATIENTS TO HONOLULU BECAUSE OUR UNPAID HOSPITAL BILLS HAVE REACHED OUTRAGEOUS LEVELS. OUR GOVERNMENT CAN NOT PAY THESE BILLS. THIS IN ITSELF SHOWS OUR GOVERNMENT INCAPABLE OF MANAGING ITS AFFAIRS.

8. WE DO NOT THINK THAT THE MARSHALLESE WILL BE ABLE TO GOVERN THEMSELVES WITH A MANDATE OF A SIMPLE MAJORITY OF 58 AGAINST 42 PERCENT OF THE PEOPLE WHO HAVE VOTED TO APPROVE THE COMPACT OF FREE ASSOCIATION BECAUSE OF THE FOLLOWING CONCERNS:

A. THE REPUBLIC OF THE MARSHALL ISLANDS HAS BEEN WHOLLY UNRESPONSIVE TO THE NEEDS AND INTERESTS OF THE 42% OF THE MARSHALLESE PEOPLE;
  I. NO LEGAL COUNSEL FOR MINORITY PARTY
  II. NO MONEY FOR OUR OFFICIAL ACTIVITIES

B. THE PEOPLE OF THE MINORITY SECTOR OF THE MARSHALLS HAVE NOT RECEIVED THEIR FAIR SHARE OR REVENUE EXPENDITURES, AND HAVE NOT HAD ADEQUATE PARTICIPATION IN AND BENEFIT FROM DEVELOPMENT PROJECTS;
  I. DID NOT PARTICIPATE IN THE NATIONAL ECONOMIC DEVELOPMENT PLAN

  II. NO MEMBER OF OUR PARTY IS IN ANY GOVERNMENT DECISION-MAKING POSITION.

C. THERE HAS BEEN A CONSISTENT PATTERN OF IRREGULARITIES IN THE ACTIONS OF THE GOVERNMENT, VIOLATING DUE PROCESS OF LAW, AND VIOLATING NORMS OF PUBLIC ACCOUNTABILITY;
  I. REPMAR TRIED TO GET RID OF THE U.S. LEGAL SERVICES FROM THE MARSHALLS.

D. THERE IS STRONG EVIDENCE OF UNETHICAL BEHAVIOR ON THE PART OF SOME GOVERNMENT OFFICIALS;
  I. BORROWING MONEY FROM GOVERNMENT GENERAL FUND BY GOVERNMENT OFFICIALS,
  II. LAYING OFF CERTAIN GOVERNMENT EMPLOYEES WHO ARE ASSOCIATED WITH COALITION PARTY,
  III. USING GOVERNMENT EQUIPMENT FOR THEIR PRIVATE USE.

E. THERE IS AN UNMISTAKABLE TREND TOWARD CONSOLIDATION OF POWER BY THE MAJORITY IN CONTROL OF THE GOVERNMENT, IN DEFIANCE OF THE LEGITIMATE RIGHTS AND INTERESTS OF THE MINORITY;

F. WASHINGTON CONTINUES TO SUPPORT THE PRESENT ADMINISTRATION WHICH HAS INCORPORATED THE BUREAUCRATIC INSTITUTIONS INTO A POLITICAL PARTY MACHINE, WIDENING SOCIO-ECONOMIC INEQUALITY GAP, GENERATING POLITICAL DEPARTICIPATION AND HEIGHTENING REPRESSION OF HUMAN RIGHTS.
  I. WE HAVE EVERY REASON TO BELIEVE THAT IF THIS BUREAUCRATIC BUILD-UP CONTINUES THE REPUBLIC OF THE MARSHALL ISLANDS WILL SOON BECOME A SMALL PHILIPPINE.

WHAT CONSTITUTES READINESS FOR SELF-GOVERNMENT HAS NEVER BEEN SPELLED OUT BY THE ADMINISTERING AUTHORITY. ON THE OTHER HAND, IF THE 58 PERCENT MARGIN IN THE RECENT PLEBISCITE IS JUDGED BY THAT AUTHORITY TO BE THE SINGLE MOST IMPORTANT CRITERIA FOR THE MARSHALLESE PEOPLE TO TAKE OVER THE REIGN OF THE GOVERNMENT, THEN WE MUST ASK OURSELVES IS THE ADMINISTERING AUTHORITY FULFILLING ITS MORAL AND LEGAL RESPONSIBILITIES UNDER THE TRUSTEESHIP AGREEMENT.

WE BELIEVE IN QUALITY OF LIFE AND HUMAN DEVELOPMENT IN SOCIAL, ECONOMIC, EDUCATIONAL AND POLITICAL ARENAS. WE BELIEVE IN IDEALS SUCH AS EQUALITY BEFORE THE LAW, RESPECT FOR THE LAW, LIBERTY AND FREEDOM FOR EVERY CITIZEN. WE CARE LESS FOR STYLES, SYMBOLS AND FORMS AND MORE FOR SUBSTANCE AND INTEGRITY.

MR. CHAIRMAN, WE BELIEVE IN THE AMERICAN DEMOCRATIC SYSTEM. AND WITH THAT WE FEEL WE MUST PROTECT OUR MOST BASIC HUMAN RIGHTS. WE REJECT ANY PRESCRIBED RELATIONSHIP WHERE PRESCRIPTION REPRESENTS THE IMPOSITION OF ONE MAN'S CHOICE UPON ANOTHER. FREEDOM IS NOT A GIFT, IT MUST BE ACQUIRED BY STRUGGLE. FREEDOM IS NOT AN IDEAL LOCATED OUTSIDE OF MAN, NOR IS IT AN IDEA WHICH BECOMES MYTH. IT IS RATHER THE INDISPENSABLE CONDITION FOR THE QUEST FOR HUMAN COMPLETION.

MR. CHAIRMAN, WE REPSECTFULLY REQUEST THIS COMMITTEE TO TAKE OUR VIEWS INTO SERIOUS CONSIDERATION. FURTHERMORE, WE ALSO ASK THAT THIS COMMITTEE TAKE INTO CONSIDERATION OUR WISH TO BECOME A COMMONWEALTH OF THE U.S.A. UNDER THE COMMONWEALTH, WE WILL BE MEMBERS OF YOUR FAMILY AND PROTECTED BY YOUR LAWS AND HAVE ACCESS TO YOUR LEGISLATIVE AND JUDICIAL SYSTEMS. AT THE SAME TOKEN THE MARSHALL ISLANDS AND ITS ENTIRE 200 MILE ECONOMIC ZONE AND ITS STRATEGIC VALUE WILL BE INTEGRATED INTO THE U.S. JURISDICTION.

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, WE THANK YOU FOR THE OPPORTUNITY TO SPEAK BEFORE YOU TODAY.

WHY THE COMPACT SHOULD NOT BE APPROVED:

A GRASSROOTS REAPPRAISAL

Statement
of
Senator Carl Heine
before
Committee on Energy and Natural Resources
U.S. Senate
May 24, 1984

Mr. Chairman and distinguished members of the Committee on Energy and Natural Resources. My name is Carl Heine; this is my second term as senator in the Marshall Islands Parliament. Prior to that I worked for the Trust Territory Government for over 15 years. I am a product of the American public and private school system; I completed doctoral work in Political Science with a focus on "dependent-development" in the Marshall Islands, 1981.

It is my pleasure to appear before this committee, and a privilege to represent the "Opposition Party" in the Marshall Islands. The following atolls are represented through this organization: Kwajalein, Rongelap, Lib, Lae, Jaluit, Ebon, Mili, and Watje. With the exception of Lae, all these atolls voted against the Compact of Free Association. In addition, Kili/Bikini also voted against this Compact.

My colleague Senator Ataji Balos from Kwajalein will speak specifically on those issues affecting Kwajalein Atoll.

Last week I spoke before the U.N. Trusteeship Council regarding the unacceptability of the Compact. I was also joined by representatives of the people of Kwajalein, Rongelap, Bikini and Enewetok, all protested against the Compact of Free Association, thus making a total of 10 atolls out of 24 speaking out against the Compact.

I am not here to clinically analyze the Compact for you. I know that you have studied it far more than I have. I am here, rather, to give you the view from below -- from some of the people who, in the final analysis, will have to live and bear the burden of a Compact that they themselves have voted against.

The Trusteeship Agreement and the U.N. Charter speaks eloquently of the "right to self-determination" and "self-government" of dependent people, but the Compact for Free Association through Section 313 gives the United States veto power over any Marshallese government action which the U.S. has determined to be incompatible with American authority and interests.

Most authorities and legal scholars on U.S.-Marshalls relations have come to the same conclusion that, in the final analysis, the U.S. security interests overshadow every other consideration. Professor Clark of Harvard has noted that Section 331 of the Compact allows the United States to determine which of its defense treaties or security agreements will be applicable to Micronesia...and that Section 331, along with the "incompatibility" powers of Section 313, are significant infringement upon Marshallese claims for self-government.

Is this self-government? I ask, or is the Trustee benefiting itself at the expense of its trusts?

Professor Freeman of Cornell University wrote about the U.S.-Micronesian negotiations that "the fundamental principle of the trusteeship is that the trustee cannot profit at the expense of the beneficiary; it must exercise good faith; it must do everything for the beneficiary's best interests; it must always account for what it has done; the trust must come to an end when the purpose of the trust is fulfilled and the beneficiary can take charge of its own affairs."

The result of the plebiscite vote on the Compact is the lowest in Micronesia: 79% of the people in FSM voted to approve it; 62% in Palau.

In his message to the U.S. Congress, President Reagan stated that the Compact of Free Association has been approved in the Marshall Islands by an "impressive vote." I don't think 58% is impressive at all. The President went on to say that the Compact was negotiated by all factions of the Marshallese people. Not so. No members of our party were involved in any significant way during all the years of negotiations. These statements are slightly misleading.

Mr. Chairman, that the Section 177 is a major point of dispute is without question. Even our own President, after signing that section in Honolulu in 1982, while under questioning in our own Parliament, had to admit that he "did not know what he was signing as he was sick and without his advisers."

If the President did not know what he was signing, how many people, simple folks, in the remote communities of the outer islands knew what they were voting for. I submit, not one.

Is it right, morally or legally, to impose Section 177 or this whole legal document on a people who did not understand its social, economic, and legal implications?

Today, Marshallese interests are subservient to the interests of the Administering Authority under the Trusteeship Agreement. Tomorrow, if the Compact of Free Association is approved by the U.S. Congress, the Marshallese will be in the same category as they were under the Trusteeship Agreement, because, among other things, the Compact clearly assigns a higher degree of importance to American claims over Marshallese claims should they come into conflict.

Mr. Chairman, I submit that a 58% margin in a highly divided society is not a sufficient mandate to govern. What the plebiscite has done is to give the U.S. administration a false sense of accomplishment, and at the same time legitimize the role and position of the U.S. government in a post trusteeship Marshalls. The U.S. Government will have a stronger military posture in the Marshalls with accountability to no one in the international community.

It does appear that a profound moral and legal question is posed here for the international community. This Committee is well aware of the inadequacy of health care. The hospitals and clinics are grossly inadequate and poorly supplied with required medicines. iIn the area of litigation to pursue health damages and land claims resulting from the U.S. testing programs, the people of these communities directly affected are greatly concerned. It is not likely that this will end when the Compact is approved. It is important to note here that lawyers have brought these disadvantaged people a new means of much-needed power, and it would be damaging to jeopardize this by attacking their sensitive lawyer-client relationship.

Long term questions of political status are critical at this moment in history. There are unresolved health, land and economic problems. Profound moral and legal questions are raised. The Administering Authority is rushing to terminate the Trusteeship Agreement when it knows very well that these fundamental problems in the Marshalls have not been settled.

Ten atolls in the Marshall Islands today are opposed to the Compact, including Bikini and Enewetok. Of the four atolls who are listed under the 177, three are against it and one is for it. All in all there are over 10,000 people who do not want the Compact.

We must ask, can the Marshallese live in harmony after the Trusteeship Agreement is terminated? Is the Administering Authority fulfilling its obligation under the Trust Agreement or is it running away from them?

A compact should not create a people or a country; rather the people should create a compact and the environment of that compact in which they would have to live.

The Compact in its present form favors the Marshallese elite and the U.S. military interests. It was designed specifically for their respective interests. There are no written guarantees in the Compact that the interests and welfare of the outer-islands people will be protected.

I respectfully request this Committee to consider our views and our concerns.

Mr. Chairman, I thank you for this opportunity to speak to your Committee.

PROBLEMATIC SECTIONS OF THE COMPACT AND GENERAL OBSERVATIONS

Sen. Carl Heine

1. SECTION 161. The President of the U.S.A. may exempt any activities of the U.S. Government from environmental standards or procedures.

2. SECTION 163a. Marshall Islands Government may have access to U.S. facilities for information, but the U.S. Government makes the final decision as to what constitutes "unreasonable interference."

3. SECTION 313. Gives greater authority to U.S. (veto power) over any action of the Marshall Islands Government, including business agreements or treaties with foreign countries.

4. BOTH SECTIONS 331 & 313. Are significant infringements upon Marshallese claims for self-government. [Self-government is fundamental to the Trust Agreement.]

5. SECTION 177. Constitute full settlement of claims past, present and future, in relation to the nuclear testing program. This section is not supported by the Bikini, Rongelap and Enewetok people.

6. SECTIONS 453 & 454. These sections give the U.S. Government longer military use beyond the 15-year period of the Compact. Military use and deniability are not linked with that period of time.

7. The Compact does not change the basic nature of the U.S.-Marshallese relationship, it just changes the political label. The U.S. military posture in post trusteeship Marshalls is basically the same.

8. The Compact does not guarantee that funds will be distributed equally and as a matter of fundamental right to the other islands of the Marshalls. No funds are earmarked to these islands as it does in the Compcat of FSM.

9. There are profound moral and legal questions that are raised and will continue to arise in a post trusteeship Marshalls. Nearly 40 years of American stewardship in Micronesia has conditioned the Marshallese to a relationship with the U.S.A. that is based on need and dependency. It is a destructive relationship and the 15-year Compact relationship is a guarantee for greater dependency. It is a consolidation of dependency, not the beginning of self-sufficiency.

10. The Compact, if approved, will surely guarantee that the few rich and powerful men in the Government will be richer and more powerful; and the many who are weak and poor will be weaker and poorer.

11. The concept of "self-determination" and U.S. "strategic interest" are clearly incompatible. They were not compatible from the time the Trusteeship Agreement was written 37 years ago. During the past 14 years of status negotiations, this incompatibility has manifested itself in section after section of the Compact. How can you reconcile the military interests of a powerful country with a ruthless administration and a people who are poor and weak? There is no way.

The final product, The Compact of Free Association, is the outcome of "Might makes right."

Senator MATSUNAGA. Thank you very much, Senator.

Now, when you speak of the minority, say in the Senate, how many constitute the minority?

Senator CHUTARO. Thank you.

According to our last plebiscite in September, we had 42 percent of those who voted, but this is not counting those people who did not vote.

Senator MATSUNAGA. No; I'm speaking of the senators themselves.

Senator CHUTARO. I see. I'm sorry.

Senator MATSUNAGA. Is it 42 percent minority?

Senator CHUTARO. No; we have now about 13 members.

Senator MATSUNAGA. Out of how many?

Senator CHUTARO. Out of 33.

Senator MATSUNAGA. That's about one-third roughly.

Senator CHUTARO. Roughly.

Senator MATSUNAGA. So your opposition is based on the fact that the people are still not ready for self-government. Is that your position?

Senator CHUTARO. If I may, I would like to answer that question, and if my colleague would to help with the answer.

Yes; we do believe that we are not ready yet under that arrangement in the compact.

Senator MATSUNAGA. And do you feel the same way, Senator Heine?

Senator HEINE. In a way, yes. But our main objection, if I may state, is based on our relationship with the present government structure and its attitude toward minority people in the government at the present time.

Senator MATSUNAGA. When do you think you will be ready?

Senator CHUTARO. Mr. Chairman, may I?

Senator MATSUNAGA. Yes, Senator.

Senator CHUTARO. I'm not sure what I can compare it with here in the United States, but out there on the island, we have a food, we call it pandanus, in our word we call it bup. When the food is ripe we can see it clearly that it's ready, but when it is in the young stage we know it's not ready.

Senator MATSUNAGA. Well, we have pineapples in Hawaii and sometimes it looks awfully green, but when you cut it open it's ripe and sweet. You don't think this might be the case? You don't think this is the case down in the Marshall Islands or the Micronesian Islands?

Senator CHUTARO. Mr. Chairman, it may be with some of us, but it may not be with many of us.

Senator MATSUNAGA. Well, of course, when you say 58 percent of those who voted, what would that be of the percentage of those who were eligible to vote? Do you have any such figures?

Senator HEINE. About 6,000-some people.

Senator MATSUNAGA. No; I mean——

Senator HEINE. Out of 10,000.

Senator MATSUNAGA. Let's see, it was 58 percent approving, 42 percent disapproving; that is of the number of those who voted, right?

Senator HEINE. Correct.

Senator MATSUNAGA. Now, when you take the total number of voters eligible to vote, what will the percentage be, that is, of those who approved?

Senator CHUTARO. That will be total of about, probably around 70 percent of those who voted of the 70.

Senator MATSUNAGA. Oh, I see. It was of the 70 percent that 58 approved?

Senator CHUTARO. Yes, sir.

Senator HEINE. Yes, sir.

Senator MATSUNAGA. Well, that's pretty good, because only 27 percent—well, let me preface my statement by saying you would agree that the United States is a working democracy, would you not?

Senator CHUTARO. I agree on that basis, sir.

Senator MATSUNAGA. All right. Then President Reagan was elected by 27 percent of those eligible to vote. So that's, you know, when you compare it to your 58 percent of the total, maybe it will still be down to about 40 percent as I figure. That's pretty good—that is of the total eligible to vote.

Senator CHUTARO. Mr. Chairman, may I insert something here?

Senator MATSUNAGA. Yes.

Senator CHUTARO. We are certain that probably given more time for political education with both sides expressing the pros and cons regarding the compact, probably the percentage would have not come as it is; otherwise, you would not see us here or the gentlemen sitting back there here today.

Senator MATSUNAGA. Well, I thank you very much. It's good to know that you still have the democratic process operating because there is opposition. If there weren't any opposition, then I'd be worried, really.

So I thank you. I'm sure it has taken much courage to have come before this committee to oppose the majority, but I think it shows that you have people there who are at least with the spirit of democracy. I thank you both for coming.

Senator HEINE. Thank you, Mr. Chairman.

Senator CHUTARO. Thank you, Mr. Chairman.

Senator MATSUNAGA. Our next witness is Mr. Ataji Balos, Chairman of Kwajalein Atoll Corporation, and accompanied by Mr. Stephen N. Schulman, his counsel, of Cadwalader, Wickersham & Taft of this city.

Mr. Balos, we would be happy to hear from you.

STATEMENT OF ATAJI L. BALOS, CHAIRMAN, BOARD OF DIRECTORS, KWAJALEIN ATOLL CORPORATION

Mr. BALOS. Thank you, Mr. Chairman.

Before I go on, I would like to register my support of the statement which was just made by my two colleagues just a few minutes ago.

Also at this time, Mr. Chairman, I would like to just for the record make some correction of the statement made by my other senator from my governments when they said we were—Kwajalein were involved in the negotiations. I'm sorry to say that we were not—did not take part in the last negotiations to complete the compact of free association. Just for the record I would like to state that, Mr. Chairman.

Now, Mr. Chairman, because of the interest of time, I would like to try to be very brief.

Mr. Chairman, I would like to express my sincere thanks to you and the committee for your interest in the views of the people of Kwajalein on the implementation of the proposed compact of free association between the United States and the Marshall Islands.

The people of Kwajalein, the holders of the traditional land rights in Kwajalein Atoll, are those perhaps most qualified to evaluate the day-to-day implications of life under the compact, as we have lived with those conditions for almost 4 years now and found them unacceptable.

The leaders of Kwajalein believe that the interests of their people and of all citizens of the Marshall Islands will be best served by the creation of a commonwealth of the Marshall Islands similar to that existing between the Northern Mariana Islands and the United States.

At this time, I would like to introduce the counsel for the Kwajalein Atoll Corporation, Mr. Stephen Shulman, senior partner with the law firm of Cadwalder, Wickersham & Taft.

I have asked Mr. Shulman to explain our position briefly, and he has consented to answer any questions that any of you may have.

Mr. Chairman, thank you.

Senator MATSUNAGA. Mr. Shulman, if you would proceed.

STATEMENT OF STEPHEN N. SHULMAN, COUNSEL, KWAJALEIN ATOLL CORPORATION

Mr. SHULMAN. Thank you, Mr. Chairman.

I think what might be most helpful would be if I could outline one particular point so that it can be clearly before the committee.

As you noticed in your questioning of the president of the federated states of Micronesia, Mr. Chairman, the question of defense bases is a matter of great interest in Micronesia, and in the Marshall Islands the question of defense bases is dealt with by something called the military operating—military use and operating rights agreement, M-U-O-R-A or MUORA.

That is a subsidiary agreement of the compact introduced by the compact section calling for defense facilities.

Every defense site mentioned in MUORA is in Kwajalein Atoll.

Now what has happened in this: The Compact was approved in the Marshall Islands, as you have just had explained to you at some length, by a vote of 58 percent. However, the compact was rejected in Kwajalein Atoll by a vote of some 70 percent.

The interesting point and the significant point is that the MUORA provides for a 40-year term, whereas, the compact provides only for a 15-year term. For the compact to go on beyond 15 years, further negotiations are necessary. However, under the MUORA, the United States has the option, with no further negotiations, to expand the second 15-year term.

What happens then is in the only place where the people were voting on a 40-year term, the vote was 70 percent against. So that the expression by the Marshallese people, who are affected by defense bases, is a 70 percent negative vote. The quirk that what was put before the people was the compact enabled the vote to be taken on the basis of what appeared to be the 15-year term when, in fact, it is with respect to the bases a 30-year term.

That leads to the position of the Kwajalein landowners as to the compact; which is first, that they preferred that it be rejected in total because they are in favor of a commonwealth; but, second, if it is to be approved, a condition of approval be at a minimum that the second 15-year term of the MUORA be disapproved, so that the people of Kwajalein can be in the same situation as everybody else in the Marshalls with a 15-year term.

Thank you, Mr. Chairman. If you have any questions, I'd be delighted to respond to that.

Senator **MATSUNAGA**. Well, thank you very much.

You have provided statements in writing and, if you wish, I will have them inserted into the hearing record. And we also have statements by the Mayor of Kwajalein Atoll, and I believe others.

Mr. **SHULMAN**. That's correct.

Senator **MATSUNAGA**. And you wish those statements to be included in the record?

Mr. **BALOS**. Yes, Mr. Chairman.

Senator **MATSUNAGA**. All right. Then without objection, it is so ordered, that they will all be included in the record.

[The prepared statements follow:]

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARING OF MAY 24, 1984

STATEMENT OF STEPHEN N. SHULMAN
CADWALADER, WICKERSHAM & TAFT
COUNSEL TO KWAJALEIN ATOLL CORPORATION

Chairman McClure, members of the Committee, ladies and gentlemen, I would first like to thank the Committee for making time available for me to testify today. I would also like to thank Senator Balos, Chairman of the Kwajalein Atoll Corporation, for allowing me the honor of speaking today on behalf of the corporation and its members, people of Kwajalein Atoll. My law firm, Cadwalader, Wickersham & Taft, provides legal representation for the Kwajalein Atoll Corporation, a non-profit organization whose members consist of the great majority of the landowners of Kwajalein Atoll who lease their land for military use by the United States. My task in appearing before you today is to outline briefly the disadvantages of the proposed Compact of Free Association to all parties concerned, both in the United States and the Marshall Islands but especially to the landowners of Kwajalein Atoll, and to summarize the advantages of the alternative espoused by my clients, the creation of a Commonwealth of the Marshall Islands as a territory of the United States.

The United States has occupied the land of the people of Kwajalein for the Kwajalein Missile Range for over twenty years. For the past four years, the United States has leased the land under a series of Interim Use Agreements that have defined the relationship between the landowners and military authorities. The most recent Interim Use Agreement is for fiscal years 1982 to

1985, unless the proposed Compact earlier comes into force. The relationship between the landowners and military authorities will be the same under the Compact as it is under this latest Interim Use Agreement. Accordingly, the people of Kwajalein are, for all practical purposes, already living under the conditions that the Compact will impose on them.

Their experience has shown that life under the Compact would not be acceptable. Basic social and economic services for the Marshallese of Kwajalein range from inadequate to shocking. Health care and education are substandard at best. The people are consigned to Ebeye and unwelcome on their own land. The indignities of perceived second-class citizenship -- not only on Ebeye but as they transit Kwajalein -- have an impact of degradation on the people far greater than that of daily inconvenience.

If conditions are unacceptable in the short term, they are intolerable over the 30-year term contemplated for military occupation under the Military Use and Occupancy Rights Agreement (MUORA). The terms of this document, which define the base rights of the United States in Kwajalein under the Compact, will be forced on the people of Kwajalein despite the fact that those people voted against the Compact by a margin of three to one! The Congress should condition any approval of the Compact for the Marshall Islands upon the nullification of the present MUORA and the negotiation of an entirely new arrangement that is fairer to all parties concerned. At a minimum, the condition should foreclose the second 15-year term provided by the MUORA.

More fundamentally, however, it is the Compact itself that contains the fatal flaw. Free association promises not to serve the interests either of the Marshall Islands or of the United States. For example, the United States will have all of the strategic rights and prerogatives that it would enjoy if the Marshalls were an integral part of the United States -- except the protection of permanence. For their part, the Marshallese people and, in particular, the Kwajalein people will have none of the protections that United States citizens would enjoy in the same situation. The Kwajalein people will have no access to U.S. courts to protect their constitutional rights and civil liberties, and the courts of the Marshall Islands will have no jurisdiction over U.S. military activity in Kwajalein. Likewise, U.S. citizens will have free access to enter and work in the Marshall Islands, but citizens of the Marshalls will not enjoy comparable rights of citizenship even in their own territory.

The leaders of the Kwajalein people have faced the reality that the Compact just cannot work. In their view, the emerging relationship of the Commonwealth of the Northern Mariana Islands and the United States provides a workable alternative model for the future of the Marshall Islands. It is simply a question of replacing the novel and idiosyncratic provisions of the Compact with a well-defined, established, and permanent relationship that will benefit both parties and their constituencies. In essence, the United States will obtain a basis for the protection of its strategic interests in perpetuity. The Marshallese people will obtain the full benefits of U.S. citizenship, the protections of full constitutional rights under the law and the means of enforcing them, the preservation of traditional land rights, and the opportunity, finally, of a decent standard of living too long denied.

I will be pleased to answer any questions you may have. Thank you.

STATEMENT OF SENATOR IMADA KABUA, MEMBER, MARSHALL ISLANDS NITIJELA; PRESIDENT, KWAJALEIN ATOLL CORPORATION; CHAIRMAN, KWAJALEIN ATOLL DEVELOPMENT AUTHORITY

This is to express the great concern of the landowners and residents of Kwajalein with regard to the Compact of Free Association.

The basic relationship between the Kwajalein people and military authorities who administer the Kwajalein Missile Range is determined by the formal agreements concluded in October 1982, at the end of the prolonged occupation by Kwajalein landowners of several islands of the Atoll during the months of June to October 1982.

The formal agreements by which the occupation (known as Operation Homecoming) was ended consist of an Interim Use Agreement ("IUA") between the United States and Marshall Islands Governments and a Land Use Agreement ("LUA") between the Kwajalein Atoll Corporation and the Marshall Islands Government. Both of these agreements are for the time period October 1, 1982, to September 30, 1985. The IUA between the two governments has provisions by which it will remain in force for a period of up to 30 years if the Compact of Free Association becomes effective before the expiration of the IUA on September 30, 1985.

Because the IUA is an agreement which would continue in force under the Compact, the people of Kwajalein are, for all practical purposes, already living under the conditions which will exist under the Compact.

Those conditions, including particularly the restrictions on access, limitations on employment by the Kwajalein Missile Range, and the absence of basic economic and social services, are not tolerable in the short term and are positively unthinkable for a long-term period such as the 30 years contemplated under the Compact.

Our Kwajalein Mayor, Alvin Jacklick, testified last month in hearings of the U.S. Senate Committee on Health, Education and Labor, conducted by Senators Weicker and Inouye in Honolulu, and a copy of his statement to that committee dealing with present health and education problems in Kwajalein is furnished to you as an attachment to this Statement.

The Kwajalein community is the single group most directly affected by the United States in all of the Trust Territory. I believe it is also fair to say that Kwajalein is the single most important part of the Trust Territory to the United States from the point of view of strategic interests.

My constituents, the people of Kwajalein, voted overwhelmingly against the Compact in the September 1983, plebiscite. The margin of that vote in Kwajalein was three-to-one against adoption. The few votes the Compact did receive in Kwajalein came not from the landowner community but from those who had come from other parts of the Marshall Islands to work in Kwajalein.

The decision to formulate a free association relationship for Micronesia was made in the late 1960's. My generation of leaders, raised under American administration and educated in the United States, has an entirely different perspective from the leaders who made the decision for free association more than a decade ago.

Because our present conditions at Kwajalein are the conditions which will obtain under the Compact, we know for a certainty that the Compact will not provide a workable relationship for us.

With all due respect to both the Micronesian and U.S. Government representatives that have been involved in the long negotiation and drafting process, it is my personal view that we would all be wise to steer a different course. It seems to me the emerging relationship of the Commonwealth of the Northern Mariana Islands to the United States provides a much better model for how we should shape our future than does a continuance of the conditions and circumstances which presently affect us so negatively at Kwajalein.

My personal view is that few of the leaders and almost none of the public at large in the Marshall Islands had any real understanding of the meaning or implications of the Compact. Because we at Kwajalein are touched and affected in every aspect of our lives by the present and prospective Compact arrangements, we have become distressingly familiar with the implications of the Compact.

I believe the members of the U.S. Congress must exercise a responsible leadership role and must ask the most fundamental questions: Will this arrangement work? Does it serve either U.S. or Micronesian interests? I submit that the answer to both questions is negative and that the daily experience of Kwajalein is more than sufficient proof that further pursuit of the free association relationship will be harmful to all concerned.

STATEMENT BY ALVIN JACKLICK, MAYOR
KWAJALEIN ATOLL LOCAL GOVERNMENT,
KWAJALEIN, MARSHALL ISLANDS

Chairman Weicker, Senator Inouye, Ladies and Gentlemen, first I would like to thank the Committee for allowing me the honor of speaking to you today on behalf of my constituents, the people of Kwajalein Atoll in the Marshall Islands. Secondly, I wish to thank you, Senator Inouye, for your remarks regarding the Compact. Our people at Kwajalein voted over 75 percent against the Compact in the Marshalls plebiscite in September. We believe the Compact's health and education provisions under section 216 are totally inadequate and we are distressed that the Reagan Administration is going to submit the Compact to the Congress when it reconvenes this month. I have served since July 3, 1983 as the elected Mayor of Kwajalein. Our community consists of 8,500 people. 5,000 of those are native landowners of Kwajalein Atoll and the remainder are other Marshallese or Trust Territory citizens who have moved to Kwajalein in the period since World War II.

There is also an American community of an additional 3,500 people. They live on Kwajalein Island itself which is about 900 acres and the site of the Kwajalein Missile Range. Most of these people are contractor personnel affiliated with the Army's Missile Range.

Almost all of the indigenous population of Kwajalein Atoll was relocated in the early 1950's to the nearby island of Ebeye. It is now a predominantly Marshallese community whose population has grown to 8,500 people living on about 65 acres of total land area. This has created a population density 25 times greater than that of the American community.

The health and educational facilities of the Marshallese community existing on Ebeye Island are the focus of my remarks to you today.

Notwithstanding nearly 40 years of United States administration of Kwajalein, since the taking of Kwajalein in a battle on February 9, 1944, adequate educational facilities have never been put in. We have only one public elementary school with 1,115 students. There is no high school. The only opportunity our young people have to go on to high school is by going to one of the several public or private boarding high schools 270 miles away on Majuro or, as in a few cases, by going to Hawaii or the U.S. mainland when U.S. church groups are able to provide assistance. Less than half of our students who complete elementary school go on to any form of secondary education.

Because of the removal of our population from our home islands to make possible missile test activities of the Kwajalein Missile Range, our lifestyle is entirely urban. This makes even more critical the need for basic secondary and technical education.

Marshallese employment opportunity at the missile base is limited. The Army imposes specific policy directives of about 550 jobs, although we are certain that with adequate education and technical training programs, Marshallese persons could fill all of the logistic support employment opportunities at Kwajalein. These number about 1,500.

Our situation with respect to health is much worse.

First of all, except on an emergency basis, with emergency strictly defined, the Army's excellent hospital on Kwajalein Island is unavailable to our people. The hospital on Ebeye Island, consisting of one emergency room, one delivery room, one laboratory, and 12 beds for patients, is woefully inadequate both in size and scale.

The medical staff consists of only two doctors, three practical nurses and one paramedical person, a medex, for total medical service to our people. The chief of medical staff of the hospital regularly sees 100 patients per day, which is a level of activity far beyond any physician's ability to render adequate health care, no matter how dedicated the physician might be.

Sanitary and public health conditions on Ebeye Island have remained far below any acceptable standard. Many of the Island's dwelling units do not have sanitary running water and the recently renovated sewage disposal system has not yet been hooked up to all of the houses.

Some fresh water is barged from the Army facility on Kwajalein Island to Ebeye Island on shipments which come three times weekly. However, the Army charges our National Government for these shipments so naturally the tendency is to minimize the supply of fresh water.

My local government and the Government of the Republic of the Marshall Islands are in the process of transfer of both local taxing authority and some administrative functions.

It is, of course, our great hope that we can do a better job of operating the education and health care systems than has been done to date by either the Trust Territory or Marshall Islands governments.

However, I must tell you that the present outlook is bleak, particularly as we are confronted with outbreaks of communicable diseases at Ebeye. For example, we presently have a doctor from the World Health Organization based in the Philippines who is on Ebeye Island conducting further investigation with respect to the possibility of an epidemic of tubercular meningitis. One child died of meningitis in the month of December 1983.

At the time of the death of the child, there were not adequate antibiotic medical stocks in the Ebeye hospital. The line of bureaucratic responsibility which it was necessary to pursue in order to get adequate medications was complex. The request for assistance went first from Ebeye to the Marshall Islands Ministry of Health Services on Majuro, then to the Trust Territory Health Department on Saipan in the Mariana Islands, then to the Federal Regional Office of Health and Human Services in San Francisco, and finally, to the Hawaii State Health Department in Honolulu and then back to Ebeye.

There is now, thanks to the assistance of all of those agencies, a stock of adequate antibiotics specifically necessary for treatment of meningitis in the Ebeye hospital. However, obtaining adequate medical stocks, adequate personnel, and adequate public health measures has always been a losing battle for our community. The rows of tiny graves in our cemeteries on Ebeye grimly show that the death of our young children of one, two, and three years of age is all too common.

The entire problem of overcrowding, and the restrictions of our movement and access to other islands, are forced upon us by the Army and agreed to by our National Government. The difficult social and economic conditions which flow from this set of circumstances is attributable to the impact of a major military installation on our Atoll.

Because of this, we take the view that the responsibilities for provision of adequate education and health care are fundamental responsibilities of the United States under the Trusteeship. We look to the United States Government, which has the necessary resources to respond to our situation, and we hold it responsible to help us deal with the problems we confront.

We in our local government and in our community are more than willing to do everything within our power to responsibly administer our affairs and to resolve our own problems. But we must have help from the federal government of the United States in the form of both adequate taxing authority to raise revenue, and in the form of specific technical personnel and basic facilities. The leadership of Kwajalein Atoll is trying very hard to provide a future for the children of our islands and we sincerely hope that those of you here today will feel sympathetic to the needs of my people.

Let me end in my statement today with a proverb I've carried with me for some time now and have come to believe in . . . "He who does not move forward, moves backward."

Thank you very much.

January 19, 1984.
Honolulu, Hawaii

STATEMENT OF MEMBERS OF MARSHALL ISLANDS NITIJELA IN SUPPORT OF COMMONWEALTH STATUS FOR MARSHALL ISLANDS

February 23, 1984

The undersigned members of the Marshall Islands Nitijela, representing the atolls of Kwajalein, Ebon, Jaluit, Lae, Lib, Mili, Rongelap, Wotje, hereby express their support for reexamination of the attempts which have been underway for fifteen years to try to formulate a future status of free association for the Marhshall Islands. We call on the governments of the Marshall Islands and the United States to instead move toward establishing a future status for the Marshall Islands along the lines of the model already established by the Commonwealth relationship of the Northern Mariana Islands to the United States.

We support the Statement of Senator Imada Kabua of February 7, 1984, calling on the United States Congress to reject the Compact of Free Association, and to review the entire question of U.S. policy toward the future political status of the Marshall Islands with a goal of achieving creation of a Commonwealth arrangement, by which fundamental sovereignty of the people of the Marshall Islands over their lands, waters and natural resources is recognized and maintained, by which Marshallese custom and tradition as embodied in the Marshall Islands Constitution is recognized and guaranteed, and by which the people of the Marshall Islands shall gain the benefits of United States citizenship, including full access to and protection of the courts of the United States and full protection of the Constitution and laws of the United States.

We join Senator Imada Kabua's statement of February 7, 1984 and agree that few of the leaders and almost none of the public at large of the Marshall Islands had any real understanding of the meaning or implications of the Compact of Free Association. We agree that the U.S. Congress must exercise a responsible leadership role and must ask the most fundamental questions: Will this arrangement work? Does it serve either U.S. or Micronesian interests? We submit that the answer to both questions is negative and that the further pursuit of a Free Association relationship, already an undertaking which has failed for more than a decade, will be harmful to all concerned.

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STATEMENT ISSUED ON BEHALF OF THE FOLLOWING MEMBERS:

ATAJI L. BALOS
SENATOR, KWAJALEIN ATOLL

IMADA KABUA
SENATOR, KWAJALEIN ATOLL

HERMIOS KIBIN
SENATOR, KWAJALEIN ATOLL

EKPAP SILK
SENATOR, EBON ATOLL

EVELYN KONOU
SENATOR, JALUIT ATOLL

CARL HEINE
SENATOR, JALUIT ATOLL

TIBNE PHILLIPPO
SENATOR, LAE ATOLL

ALDEN BEJANG
SENATOR, LIB ATOLL

CHUJI CHUTARO
SENATOR, MILLI ATOLL

JETON ANJAIN
SENATOR, RONGLAP ATOLL

LITOKWA TOMEING
SENATOR, WOTJE ATOLL

STATEMENT OF SENATOR ATAJI L. BALOS
BEFORE SENATE APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES

CHAIRMAN MCCLURE, MEMBERS OF THE COMMITTEE, MEMBERS OF THE GENERAL PUBLIC. FIRST, PLEASE ALLOW ME TO EXPRESS MY SINCERE THANKS TO YOU, MR. CHAIRMAN, AND TO THE COMMITTEE FOR ALLOWING ME TO SUBMIT THIS TESTIMONY TO YOU TODAY. I DO SO AS A MEMBER OF THE MARSHALL ISLANDS NITIJELA FROM KWAJALEIN ATOLL AND IN MY CAPACITY AS CHAIRMAN OF THE BOARD OF DIRECTORS OF THE KWAJALEIN ATOLL CORPORATION. KAC IS THE BODY WHICH REPRESENTS THE GREAT MAJORITY OF LANDOWNERS OF KWAJALEIN ATOLL IN LEASING THE LANDS OF KWAJALEIN TO THE UNITED STATES FOR MILITARY USE.

AS THE LANDOWNERS OF KWAJALEIN, WE ARE THE PEOPLE MOST DIRECTLY AFFECTED BY THE PROJECTS OF THE KWAJALEIN ATOLL DEVELOPMENT AUTHORITY, AS OUTLINE BY CHAIRMAN KABUA. WE WISH TO TAKE THIS OPPORTUNITY, ON BEHALF OF THE LANDOWNERS, THAT IS, THE INDIGENOUS PEOPLE OF KWAJALEIN, TO ENDORSE THE TESTIMONY OF

SENATOR IMADA KABUA WITH REGARD TO DEVELOPMENT AUTHORITY FUNDING. KADA HAS OUR SUPPORT AND COOPERATION AND IT IS OUR FIRM BELIEF THAT THE BENEFITS DERIVED FROM THE EFFORTS OF THE DEVELOPMENT AUTHORITY AND ITS' STRONG COMMITMENT TO IMPROVING THE QUALITY OF LIFE FOR THE PEOPLE OF KWAJALEIN WILL BE SUBSTANTIAL.

ONE OF THE BENEFITS OF THE CAUSEWAY CONSTRUCTION WILL BE THE OPENING UP OF ADJOINING ISLANDS TO EBEYE FOR AGRICULTURAL PRODUCTION. TOWARD THAT END KAC HAS ALREADY TAKEN STEPS TO FUND A FEASIBILITY STUDY FOR EXTENSIVE PORK AND POULTRY PRODUCTION. WE HOPE TO ULTIMATELY FIND THE SUPPORT OF THE UNITED STATES GOVERNMENT AND CONGRESS FOR OUR AGRICULTURAL INITIATIVE. THE BASIC OUTLINE OF THIS PROGRAM WILL BE FURNISHED TO THE COMMITTEE LATER THIS WEEK.

THERE IS ANOTHER MATTER OF EVEN MORE FUNDAMENTAL CONCERN ABOUT WHICH I WISH TO TALK VERY BRIEFLY. THAT IS THE MATTER OF FUTURE POLITICAL STATUS FOR THE MARSHALL ISLANDS. WHILE I REALIZE THIS IS NOT DIRECTLY WITHIN THE JURISDICTION OF THIS COMMITTEE, NEVERTHELESS, YOU, MR. CHAIRMAN, ARE A MEMBER OF CONGRESS OF LONG INVOLVEMENT IN THE AFFAIRS OF THE TRUST TERRITORY AND I KNOW THAT YOU ARE CONCERNED AS ONE OF THE LEADERS OF THE SENATE WITH RESPECT TO THE FUTURE STATUS QUESTION.

WHILE HEARINGS ARE ABOUT TO BE CONDUCTED WITH REGARD TO THE COMPACT OF FREE ASSOCIATION, WHICH HAS BEEN NEGOTIATED OVER A PERIOD OF MNAY YEARS AND WHICH WAS NARROWLY APPROVED IN A PLEBISCITE IN THE MARSHALL ISLANDS, MANY OF THE LEADERSHIP OF THE MARSHALLS NOW BELIEVE THAT IT IS TIME TO STEER A DIFFERENT COURSE.

THE COMPACT WAS DEFEATED BY A 75% MAJORITY AT KWAJALEIN AND WAS ALSO DEFEATED IN OTHER PARTS OF THE MARSHALL ISLANDS WHICH HAVE BEEN DIRECTLY AFFECTED BY U.S. MILITARY ACTIVITIES, SUCH AS BIKINI AND RONGELAP.

AS YOU MAY KNOW, I AM A FORMER MEMBER OF THE CONGRESS OF MICRONESIA AND PARTICIPATED IN THE AFFAIRS OF THAT BODY ON SAIPAN FOR MANY YEARS. THUS I AM FAMILIAR WITH THE NORTHERN MARIANA ISLANDS. THE RECENT SUCCESSFUL DEVELOPMENT OF THE NORTHERN MARIANAS SHOWS CLEARLY, I BELIEVE, THAT A FUTURE STATUS ALONG THE LINES OF A COMMONWEALTH BETWEEN THE MARSHALLS AND THE UNITED STATES, PROTECTING THE LAND RIGHTS OF THE MARSHALLESE PEOPLE, BUT EXTENDING TO THEM THE BENEFITS OF A PERMANENT RELATIONSHIP WITH THE UNITED STATES WOULD BE THE BEST POSSIBLE SOLUTION FOR BOTH THE U.S. AND THE MARSHALL ISLANDS

ONE OF THE AREAS OF VERY GREAT CONCERN TO US IS THE CONTINUED DISCRIMINATION AGAINST THE PEOPLE OF KWAJALIEN AT THE HANDS OF THE U.S. MILITARY AUTHORITIES RESPONSIBLE FOR THE KWAJLAEIN MISSILE RANGE. WE BELIEVE THE CONTINUED FAILURE OF OUR OWN ELECTED OFFICIALS TO TAKE ANY STEPS TO TRY TO REMEDY THIS SITUATION OVER A PERIOD OF NEARLY FIVE YEARS SINCE CONSTITUTIONAL GOVERNMENT STARTED IN THE MARSHALL ISLANDS IN 1979, IS NOT ONLY A GREAT DISAPPOINTMENT BUT A CLEAR INDICATION THAT ALTERNATIVE STEPS MUST BE TAKEN TO SECURE THE FUTURE OF THE KWAJALEIN PEOPLE AND TO INSURE THEIR MOST BASIC HUMAN RIGHTS. THE COMPACT OF FREE ASSOCIATION IS AN AMBIGUOUS, CONTRADICTORY DOCUMENT WHICH INCLUDES NO FURTHER GUARANTEES OF IMPROVEMENT AND IN FACT PROVIDES LESS FOR THE NEEDS OF MY PEOPLE THAN WHAT WE HAVE NOW. THE ONLY MEANS WE CAN SEE OF SOLVING THIS PROBLEM IS TO ESTABLISH A PERMANENT RELATIONSHIP WITH THE UNITED STATES AND BE ASSURED THE PROTECTION OF U.S. FEDERAL COURTS. IN THIS FASHION WE WOULD NO LONGER BE VULNERABLE TO THE DISCRIMINATION WHICH TAKES PLACE EVERY DAY ON KWAJALEIN.

I AM SUBMITTING TO YOU EXTENSIVE WRITTEN MATERIALS RELATIVE TO THE QUESTIONS OF FUTURE POLITICAL STATUS, INCLUDING A RECENT EXCHANGE OF CORRESPONDENCE BETWEEN THE BANK OF HWAAII AND ONE OF THE MILITARY'S CONTRACTORS AT KWAJALEIN. I BELIEVE YOU WILL NOTE FROM THESE AND OTHER MATERIALS THAT THE QUESTION OF FUTURE POLITICAL STATUS IS ONE OF CRUCIAL IMPORTANCE AND THAT AN EMERGING SUBSTANTIAL NUMBER OF THE LEADERS OF THE MARSHALL ISLANDS NOW SUPPORT COMMONWEALTH RATHER THAN FREE ASSOCIATION ARRANGEMENTS.

AGAIN MY THANKS FOR YOUR TIME AND THE OPPORTUNITY TO SUBMIT THIS TO YOU TODAY.

MAY 3, 1984
WASHINGTON, D.C.

KWAJALEIN
MARSHALL ISLANDS

Pig, Poultry and Fishing Enterprise

a Profit-Making

Demonstration & Educational

Community Project

This project will encompass varied technologies and will demonstrate how this system will compliment each other in order to fully utilize the availability of the natural resources of the Islands. In turn the overall viability of the project will be of great benefit for the people of the Islands, as well as the enterprise.

Opportunities to improve the diets and lifestyles of the local people will not interrupt or intervene with the traditions and customs of the Islands.

The objectives of this project are as follows:

1. Provide fresh meat to the Islands.
2. Produce animal feed.
3. Provide employment opportunities.
4. Produce a more economical protein source (than imported product).
5. Provide quality breeding pigs and poultry for sale to all of the adjoining islands.
6. Educate the community through practical application and service-oriented programs.
7. Increase the level of health and nutrition awareness.
8. Implement better opportunities for improved animal husbandry.

Project Requirements

1. 100 sow piggery.

2. 5,000 head poultry (for breeding, and meat and egg production).

3. Two 50 ft. fishing boats.

   -Sell fresh or dried top grade fish for human consumption.

   -Utilize second grade fresh or dried fish for high protein fish meal in animal feed programs via pelleting machine in combination with coconut or other carbohydrate sources.

   -This fish meal would be essential for the animal husbandry program.

4. A slaughter house.

5. A freezer and ice-making machine.

6. Solar air compressor for tools and pressure pumps.

7. Solar pump for water.

8. Wind pump.

9. Solar Rankine Cycle System for generating electricity.

10. Windmill for generating backup electricity.

11. 20 kilowatt diesel generator for backup.

12. Alcohol distiller for fuel from carbohydrate sources (i.e., sweet potatoes, paw paw, bananas, etc.).

13. Anaerobic digester for safer and more hygenic handling of manure. Methane gas for fuel and carbon dioxide (manure) for spiriluna (algae) protein production.

In order to accomplish all of the above tasks and requirements a total allotment of $1,000.000 would be needed.

If a feasibility study would be necessary, a 60 day mission would be conducted for a fee of $70,000.

This approximate outline of expenditures is calculated for the next 4 months:

Phase I April 30, 1984.

Travel & Accomodation	$ 3,000.00
Mobile Home for the Project	11,000.00
Mobile Laboratory, Storage Facility & Office	9,000.00
Mobile Freezer and Ice Maker	10,000.00
Educational Audio Video Program & Equipment	20,000.00
Pigery Building Accessories	12,000.00
Poultry Building Accessories	7,000.00
Food & Fish Drier Material Only	2,000.00
Salaries & Wages	9,000.00
Deposit for Fishing & Transport Vessel	5,000.00
	$88,000.00

Phase II

Hatchery for Red Perch & Marine Shrimp	$10,000.00
Shipping Equipment & Animals for Kwajalein	9,000.00
Purchase of Material for Permanent Buildings on Kwajalein	14,000.00
	$33,000.00

Phase III

Purchase of Fishing & Transport Vessel	$32,000.00

Phase IV

Travel & Accommodation, Salary, Food for Animals, Electric Generators, Local Purchase for Construction, Fuel, etc.	$47,000.00

FS

Bank of Hawaii

April 6, 1984

APR 9 1984

Mr. W. H. Dearing
Vice President
Global Associates
P. O. Box 12156
Oakland, CA 94604

Dear Mr. Dearing:

Your letter of March 23 directed to our Vice President D. B. Griffin has been somewhat delayed in arriving here since Mr. Griffin has been assigned to our New York Edge Act Office, where the letter was initially redirected. Mr. Griffin has been replaced as Regional Manager for our Pacific Island Region by Vice President M. D. Schochet. Mr. Schochet has referred your letter to me.

In that letter you have requested that we accept a change in the terms of the latest agreement executed between us on October 1, 1982 under which we operate a branch at the Kwajalein Missile Range (KMR). The existing agreement provides that our banking services are to be offered without limitation "to all individuals and organizations within the Trust Territory of the Pacific Islands to the extent allowed by law.

The proposed revision (Revision 1) which you have sent us with your March 23 letter avoids use of the language quoted above which I have underlined for facility of reference. In lieu of this very broad language, the revision is so drawn as to limit availability of our banking services to five specific groups of users, none of which - with one exception - can be construed to have even the prospect of including those intended to have been covered under the language of the October 1, 1982 agreement.

Accompanying your letter is a copy of a letter from Col. J. W. Banks, Commanding Officer KMR to Mr. Oscar de Brum, Chief Secretary, Republic of the Marshall Islands (RMI) dated February 15, 1984. In that letter, Col. Banks refers to the reported readiness of the Bank of Guam's Ebeye branch to provide full-service banking. He states, in that connection:

POST OFFICE BOX 2900 • HONOLULU, HAWAII 96846 • TELEPHONE (808) 537-8111

> "In view of the progress made by the Bank of Guam and our mutual goal to encourage Ebeye economic development and movement toward self-sufficiency, it would appear timely and appropriate to no longer allow routine access to this installation for banking purposes effective February 27, 1984."
>
> "As I have often discussed with you, we here at KMR are especially sensitive to the needs of the Ebeye community and the Kwajalein Atoll Local Government as we move toward our new relationship. I believe that this action should cause no hardship and is but another positive step toward implementing the local economic development plan. Should any individual cases arise which merit access to the Bank of Hawaii, they will be considered on a case by case basis."

In addition to Col. Banks' letter, you sent us a copy of a March 9, 1984 letter from BMD Systems Command, Huntsville, Alabama (Billy F. Perkins, Contracting Officer) directed to Mr. A. Santos, President of Global Associates forwarding a copy of Col. Banks' February 15 letter. The BMD letter states that the February 15 letter requires "Marshallese accounts to be phased out from the Kwajalein Branch of Bank of Hawaii by February 27, 1984." (all above underlining added for emphasis). As a result of the stated requirement, the BMD letter points out that the "phasing out" constitutes a change to the current sub-contract (Global and Bank of Hawaii) and requests your company consider modification. You have complied with that request by your March 23 letter.

We regret that we cannot agree quite so readily to this proposed change. There are numerous reasons for our position and the following discussion is intended to establish our logic:

1. There can be no question that Col. Banks, as Commanding Officer has absolute right and authority to establish access to KMR facilities. We have real concerns, however, as to the probable even-handedness of the "case by case" consideration of the merits of granting access to our KMR branch.

2. You have implicitly recognized one of our dilemmas relative to the change by recommending that "the Bank use the badging system at KMR as the control mechanism to determine authorized users." This places upon us a "policing" burden which we are not prepared to accept.

   Indeed, it is our belief that the directive to change and your suggestion for enforcement imply a blatantly discriminatory practice with respect to those Marshallese who are routinely authorized access to KMR based on the badge system to which you refer.

3. We acknowledge the validity of the logic that establishment of Bank of Guam's branch on Ebeye constitutes a positive step toward developing that local economy. We take strong exception, however, to the implication that Bank of Hawaii has not been a factor to that end. Bank of Hawaii has provided full banking services throughout the entire Trust Territory areas for 25 years for the purpose of fulfilling identified economic needs. Our Kwajalein Branch has long served to fulfill the related needs of the residents of Ebeye, who have had ready access to its premises during its entire existence. More critically, however, we feel very strongly that - at their personal pleasure and discretion - any individual, resident anywhere, should ordinarily have the right to conduct their affairs with anyone they may choose. The "policing" question aside, we are completely in disagreement with the logic that we should refuse to serve a Marshallese - because he is a Marshallese. Col. Banks' letter makes no case to justify such a position.

   As a matter of fact, I'm not at all sure that BMD has not misconstrued Col. Banks' intent. I find it possible to interpret his intent to have been to restrict routine access to KMR for the sole purpose of conducting banking business. We take no exception to this position.

4. We enjoy the benefit of a sizable number of deposit and loan relationships with RMI citizens at our Kwajalein Branch. Your company handles numerous allotments for your employees which payments are made to our Kwajalein Branch for credit to the respective employees' accounts. Additionally, a substantial number of banking transactions are conducted with our Kwajalein Branch through the mails. We fail to find any justification for our discontinuing any of this activity. Surely, if that should be our Marshallese customers' intent, we could not object to recognition of the individual's wish.

5. Finally, aside from the issue we have raised above, we take severe exception to what appears to be an obviously biased and completely pre-mature attempt to pre-empt our position in this matter. This is evidenced by the two letters, copies attached, between RMI and our Kwajalein Branch Manager. This totally unwarranted and - in my view - reprehensible interference in the personal affairs of RMI employees suggests that there is more involved here than at first would appear reasonable to expect.

We have gone to great lengths to detail our concerns because we recognize the very uncomfortable position in which you find yourself. I have taken the liberty of providing copies of this letter to Col. Banks and Mr. Perkins so they will understand the extent and nature of our concerns and our resulting unwillingness at this time to comply with the requested contract revision.

Additionally, because we are concerned with the discriminatory implications we have identified, and recognizing the vulnerability all parties to this situation could face as a result, I am sending copies to all four of our Congressional representatives. We are well aware of their deep concerns for the welfare of the people of our Pacific Island neighbors. We think this may accordingly, be a matter of interest to them.

We would welcome an opportunity to discuss this situation under circumstances more conducive to mutual determination and agreement than correspondence by mail. To that end, we look forward to your response and comments.

Sincerely,

S. W. Widasky
Senior Vice President

SWW:jmf

Enclosures

cc: Col. J. W. Banks, Jr.
Commanding Officer
Kwajalelin Missile Range

Billy F. Perkins
Contracting Officer
BMD Systems Command

Sen. Daniel K. Inouye

Sen. Spark Matsunaga

Rep. Daniel Akaka

Rep. Cecil Heftel

bcc: L. M. Johnson
H. F. Rice
M. D. Schochet
G. T. Igawa

REPUBLIC OF THE MARSHALL ISLANDS
MAJURO, MARSHALL ISLANDS 96960 • CABLE: REPMAR
P.O. Box D

March 12, 1984

Mr. George Igawa
Manager, Bank of Hawaii
Kwajalein

Dear Mr. Igawa:

We recently received a letter from our Kwajalein Atoll Representative, Mr. Jiba Kabua, informing us of the intention of KMR to eventually cease providing banking services to our Ebeye employees through your bank and have them utilize the Bank of Guam on Ebeye. He suggested that we proceed to cancel their bi-weekly allotments to your bank and transfer them to the Bank of Guam on Ebeye.

Before we can effect this transfer we need a written confirmation from you that these people do not have outstanding loans with your bank. Those affected will only be the RepMar employees currently working on Ebeye. I believe you can get the names of the allotters from the lists accompanying the allotment checks.

Hoping to get an early reply, I remain

Sincerely,

V. A. Miller → Finance Min.

cc: Jiba Kabua, Kwajalein
Secretary of Finance, RepMar

RECEIVED
MAR 12 1984
Kwajalein
Branch

Bank of Hawaii

GEORGE T. IGAWA
Manager

MAR 23 1984

March 21, 1984

Mr. Vincent A. Muller, Chief
Accounting & Finance
Republic of the Marshall Islands
P. O. Box D
Majuro, Marshall Islands 96960

Dear Mr. Muller:

Thank you for your letter of March 12, 1984.

At the present time, we do not have any intention of discontinuing banking services to your Ebeye or Majuro employees.

The allotments that have been established by your employees have been done on an individual basis. Therefore, we are unable to understand how Mr. Jiba Kabua can authorize any changes to the existing individual allotments.

Please write again if further information is needed.

Sincerely,

Geo. T. Igawa
Manager

√ cc: M.D. Schochet, VP
Bank of Hawaii

KWAJALEIN BRANCH • POST OFFICE [illegible] • APO SAN FRANCISCO, CALIFORNIA 96555

STATEMENT OF ATAJI L. BALOS
SENATOR, KWAJALEIN ATOLL
BEFORE THE UNITED NATIONS TRUSTEESHIP COUNCIL
MAY 16, 1984

MR. PRESIDENT, MEMBERS OF THE COUNCIL. MAY I FIRST CONGRATULATE YOU, MR. PRESIDENT, ON YOUR ELECTION TO THE PRESIDENCY OF THE COUNCIL THIS YEAR. OUR SPECIAL THANKS AND APPRECIATION ALSO TO MR. GIRMA ABEBE, SECRETARY OF THE COUNCIL FOR HIS KIND ASSISTANCE IN COORDINATING OUR PRESENTATION. I WOULD LIKE TO THANK YOU ALL FOR ALLOWING ME THE HONOR OF SPEAKING TO YOU TODAY ON BEHALF OF MY CONSTITUENTS, THE PEOPLE OF KWAJALEIN ATOLL IN THE MARSHALL ISLANDS. I AM ATAJI BALOS, SENATOR IN THE MARSHALL ISLANDS NITIJELA FROM KWAJALEIN AND CHAIRMAN OF THE KWAJALEIN ATOLL CORPORATION, WHICH IS A NON-PROFIT LANDOWNERS ASSOCIATION. I AM HERE TODAY TO SPEAK TO YOU ABOUT OUR CONCERN OVER THE FUTURE POLITICAL STATUS OF OUR NATION.

I FIRST BEGAN REPRESENTING MY PEOPLE AFTER GRADUATION FROM THE UNIVERSITY OF GUAM. FOLLOWING MY EMPLOYMENT AS A POLITICAL OFFICER WITH THE TRUST TERRITORY GOVERNMENT, I WAS ELECTED TO THE CONGRESS OF MICRONESIA IN

1968. FOR TEN YEARS I REPRESENTED THE ATOLLS OF THE NORTHERN MARSHALLS WHICH HAD BEEN DIRECTLY AFFECTED BY U.S. STRATEGIC ACTIVITIES, INCLUDING ENEWETAK, BIKINI, RONGELAP AND KWAJALEIN. I HAVE BOTH SEEN AND EXPERIENCED CHANGE AND DISAPPOINTMENT THROUGH THESE YEARS. MY PEOPLE ARE NOT HAPPY WITH THE COMPACT OF FREE ASSOCIATION, AND IT IS OUR FEELING THAT THE ONLY ARRANGEMENTS OF TERMINATING THE TRUSTEESHIP THAT HAVE BEEN MUTUALLY SATISFACTORY AND BENEFICIAL TO THE AFFECTED TRUST TERRITORY PEOPLE AND TO THE U.S. CONGRESS HAVE BEEN THOSE OF THE COMMONWEALTH OF THE NORTHERN MARIANAS.

AS MOST OF YOU KNOW THE ATTEMPT TO SUCCEED WITH FREE ASSOCIATION HAS BEEN ONGOING FOR 15 YEARS. IT HAS BEEN A VERY LONG ROAD INDEED. THE 15 YEAR PERIOD TELLS US SOMETHING -- THAT THE FUNDAMENTAL NATURE OF THE RELATIONSHIP WE ARE TRYING TO CREATE IS SOMETHING NEW AND WITHOUT PRECEDENT. THE DIFFICULTIES SURROUNDING ITS FOUNDATIONS ARE NEW AS WELL. TO A CERTAIN EXTENT, WE MUST ALL DEPEND ON HOW THE TWO PARTIES, THAT IS THE U.S. AND THE LOCAL GOVERNMENTS, WHO HAVE NEGOTIATED THE RELATIONSHIP WILL INTERPRET AND ADMINISTER IT. WE ARE DEPENDING ON A

PREDICTION OF HOW THESE GOVERNMENTS WILL INTERPRET THIS DOCUMENT CALLED THE COMPACT OF FREE ASSOCIATION. A DOCUMENT THAT WE HAVE COME TO BELIEVE IS BROAD, AMBIGUOŪS AND GENERALLY MISUNDERSTOOD BY THE PEOPLE OF OUR PACIFIC ISLAND NATION.

I WOULD LIKE TO POINT OUT THAT THE PEOPLE OF KWAJALEIN HAVE A BETTER IDEA THAN MOST OF WHAT IS IN STORE UNDER THE COMPACT. THIS IS BECAUSE THE FRAMEWORK UNDER THE 1982-85 US REPMAR INTERIM USE AGREEMENT IS THE SAME AS THAT WHICH WILL APPLY UNDER FREE ASSOCIATION, AND WE ARE CURRENTLY LIVING ACCORDING TO THOSE GUIDELINES. THERE IS NO WAY TO DESCIRBE THAT SITUATION AS ANYTHING OTHER THAN INTOLERABLE.

THE COMPACT'S HEALTH AND EDUCATION PROVISIONS UNDER SECTION 216 ARE TOTALLY INADEQUATE. RIGHT NOW WE HAVE NO HIGHSCHOOL AND LESS THAN HALF OF OUR STUDENTS WHO COMPLETE ELEMENTARY SCHOOL GO ON TO ANY FORM OF SECONDARY EDUCATION. THE HOSPITAL WHICH IS TO SERVE MORE THAN 8,000 PEOPLE HAS ONLY 12 BEDS FOR PATIENTS. SANITARY AND PUBLIC HEALTH CONDITIONS ARE FAR BELOW ANY ACCEPTABLE STANDARD.

A SIMPLE TRIP TO THE BANK AT KWAJALEIN INVOLVES WAITING ON A BUS WHILE TEN PEOPLE AT A TIME ARE ALLOWED TO ENTER TO CONDUCT THEIR BUSINESS. THIS TYPE OF RESTRICTION, ENFORCED BY THE U.S. ARMY APPLIES ONLY TO THE MARSHALLESE AND WE ARE ONLY ALLOWED TO GO TO THE BANK ONE DAY A WEEK. I ASK YOU HOW CAN MY PEOPLE HAVE AN UNDERSTANDING OF FREEDOM AND DEMOCRACY UNDER "FREE ASSOCIATION" IF THEY ARE SUBJECTED TO THIS BIASED TYPE OF TREATMENT.

FURTHERMORE, FREE ASSOCIATION IN ITS APPLICATION MEANS THAT THE U.S. WILL HAVE ALL OF THE STRATEGIC RIGHTS AND PEROGATIVES WHICH IT WOULD HAVE IF THE MARSHALLS WERE INCORPORATED AS AN INTEGRAL PART OF THE U.S. BUT THE MARSHALLESE PEOPLE AND IN PARTICULAR, THE KWAJALEIN PEOPLE, WILL HAVE NONE OF THE U.S. DOMESTIC PROTECTIONS AGAINST EXERCISE OF THOSE STRATEGIC POWERS. WE WILL NOT HAVE ACCESS TO U.S. COURTS TO PROTECT OUR FUNDAMENTAL HUMAN RIGHTS AND CIVIL LIBERTIES. THE U.S. WILL HAVE CONTROL OF CIVIL AVIATION AND U.S. CITIZENS WILL HAVE FREE ACCESS TO ENTER AND WORK IN THE MARSHALL ISLANDS, YET THE MARSHALLS COURTS WILL NOT HAVE JURISDICTION OVER ANY U.S. MILITARY ACTIVITY. UNDER THE MILITARY USE AND OPERATING RIGHTS AGREEMENT OUR GOVERNMENT COULD NOT EVEN REQUIRE A U.S. MILITARY PERSON OR A CONTRACT EMPLOYEE TO GET A DRIVERS LICENSE.

Perpaps our greatest concern is that the agreement calls for what we see as a perpetual subservient dependency on the United States. Consequently our government will never have the strength or the will to defend the rights of its individual citizens when those rights are in conflict with U.S. security interests. A financial dependency initially minimized my country's bargaining power for negotiating the Compact and ultimately created an unbalanced settlement to say the least. As far as it looks, this situation can only get progressively worse under Free Association.

It is fair to say that the Kwajalein community is the single group most directly affected by the U.S. in all of the Trust Territory and undoubtedly the most important strategic interest. My people voted 75% against the Compact last September -- three to one against adoption. The overall rejection rate was 42 percent in the Marshalls, notwithstanding its support by a government with a huge majority support. We believe a decision on future status by a 5-4 margin is no clear mandate for anything. We believe we must steer a different course and continue working until the job is done right and something is agreed upon which my people can truly understand and support.

FREEDOM, DEMOCRACY AND JUSTICE ARE ALL FOUNDING PRINCIPLES OF A GREAT NATION -- THE UNITED STATES. MY PEOPLE HAVE COME TO VALUE THESE WORDS AND RESPECT THEIR MEANING. WE WISH MORE THAN ANYTHING TO EXPRESS TODAY OUR DESIRE TO WORK WITH THE UNITED STATES TO FIND THE SOLUTION TO THIS PROBLEM OF POLITICAL STATUS. WE BELIEVE THAT THAT SOLUTION LIES IN A FUTURE STATUS ALONG THE LINES OF A COMMONWEALTH LIKE THAT OF THE NORTHERN MARIANAS, AND THAT A PERMANENT RELATIONSHIP, WHICH PROTECTS THE LANDRIGHTS OF THE MARSHALLESE PEOPLE AND EXTENDS TO THEM THE PROTECTION GUARANTEED BY DUE PROCESS OF LAW, WILL ULTIMATELY BE WHAT IS BEST FOR BOTH NATIONS.

THANK YOU.

Senator **Matsunaga**. As I have asked the others, relative to the developmental plan, are you satisfied with the developmental plan as presented to the Appropriations Committee?

Mr. **Balos**. Mr. Chairman, to address this question, we have the—the president of development committee was here a few weeks ago to present the entire package for the development of Kwajalein Atolls, and I understand it is in the hands of the Appropriation Committee, once there is money passed by this Congress I think it will be really helpful.

Mr. **Shulman**. If I could expand on that, Mr. Chairman.

Senator **Matsunaga**. Yes.

Mr. **Shulman**. The development time that takes place within the funding provided by the compact is not satisfactory to the Kwajalein people. The plan that he's talking about by the Kwajalein Atoll Development Authority calls for a separate appropriation.

Senator **Matsunaga**. You're making specific reference to Kwajalein?

Mr. **Shulman**. Yes; there was extensive—or there would have been extensive testimony but it didn't actually get off the ground on the subject of a powerplant and desalinization project in Kwajalein which was to be a separate line item in that part of the overall Marshalls' economic budget.

Senator **Matsunaga**. Do you have anything further to add?

Mr. **Balos**. No, Mr. Chairman, I don't have any further comment to add, but I would like to urge this committee to support what we have said here this afternoon and consider it very seriously.

Thank you, Mr. Chairman.

Senator **Matsunaga**. Thank you, Mr. Balos and Mr. Shulman.

Our next witness is Jonathan Weisgall, on behalf of the people of Bikini. I understand Senator Henchi Balos is also present from Bikini.

So we would be happy to hear from both of you.

STATEMENT OF JONATHAN M. WEISGALL, COUNSEL, ON BEHALF OF THE PEOPLE OF BIKINI, ACCOMPANIED BY HON. HENCHI BALOS, SENATOR, BIKINI ISLAND

Mr. **Weisgall**. Thank you, Senator.

Thank you for providing the people of Bikini an opportunity to testify before you today. As indicated, Senator Henchi Balos is with me today. He is the elected representative of the people of Bikini to the Marshall Islands Legislature.

I have submitted for the record a lengthy statement and I would like to summarize it very briefly here now.

The basic message, I guess, goes back to Senator McClure's opening statements this morning in which he said that the United States intends to fulfill its obligations, including those of the past. And there is a lot of history when it comes to the people of Bikini.

I think you, Senator, are generally aware of the Odyssey of the Bikini people, who have been moved a total of five times by the United States over the last 38 years, beginning in 1946. They were moved first to Rongerik Atoll, where they nearly starved to death; were then moved in 1948 to Kwajalein briefly, and then down to Kili Island, which is located some 425 miles south of Bikini. Kili has been their temporary home for 36 years now. It is only one-third of a square mile in area. It has a very narrow reef and has no lagoon, as compared to Bikini's 23 islands and wide reef and very vast lagoon.

The Bikini's access to the island is virtually impossible most of the year due to the surf conditions making fishing or floating of boats virtually impossible.

The rest of the Bikini story can be told quite briefly. In 1967, the Atomic Energy Commission conducted one of its many surveys of Bikini, and based on that study, President Johnson, in August 1968, declared Bikini safe for resettlement.

Bikinians went back beginning in 1969 and were moved off again in 1978 when tests by U.S. scientists concluded that the people there had ingested possibly the largest amounts of radiation of any known population.

History repeated itself, the U.S. boats came back to Bikini in 1978 and moved everyone off again. Most went back to Ejit Island in Majuro Atoll and Kili. No one has been permitted to reside on Bikini Atoll since then.

I don't think there's any reason to dwell on the value of Bikini to the United States, it virtually goes without saying. There were 23 nuclear tests at Bikini. Each one was of extreme importance to U.S. strategic planning. Bikini was directly responsible for billions of dollars of savings in the U.S. Defense budget in the 1940's and the 1950's, as the United States was able to maintain strategic nuclear superiority over the Soviet Union. I think the Atomic Energy Commission itself put the matter very well back in 1953 saying, quote, "Each of the tests involved major expenditure of money, manpower, scientific effort and time. Nevertheless, in accelerating the rate of weapons development they saved far more than their cost".

Now, it's been the view of the Bikini people since 1846 that the U.S. Government would care for them until they could safely return to their homeland. And, indeed, as late as 1978, when they were moved off Bikini for a second time, the U.S. Government seemed to go along with that view.

At that time, the No. 2 official in the Interior Department and the High Commissioner and the Director of Territorial Affairs signed a statement of understanding on the move of the Bikini people, and that document stated in part, and I quote, "The government of the United States considers itself generally responsible for the well-being of the Bikini people and their descendents," unquote.

As you know, the compact, at section 177, agreement fundamentally alter that relationship. The United States has, on a government-to-government basis concluded an agreement with the Marshall's government and essentially passed the bulk of the Bikinians to the Marshall Islands.

You must remember, it was the United States, obviously that took Bikini Atolls and not the Marshalls government. It was the United States that rendered it unhabitable, and the United States that promised to care for the people; and, most importantly today, the United States that has the wherewithal to clean up Bikini.

The Bikini people voted over 90 percent against the compact. The section 177 agreement does provide them with compensation, but it is their view that it fails to discharge the legal and moral responsibilities of the United States toward them; the most important, which is the cleanup of Bikini.

Now, in 1982, Congress, in a supplemental appropriations bill provided funds for a study on the feasibility and cost of cleaning up Bikini, and the Bikini Atoll Rehabilitation Committee issued an interim report last November, and just 3 weeks ago, before the House Interior Appropriations Subcommittee, the chairman of that scientific group stated that it is technologically feasible to clean up the two major islands of Bikini, Bikini and Enju, and that the cost could be as low as $60 million. The cost of contaminating Bikini, of conducting the weapons tests there was about $91 billion measured in today's dollars.

So we are looking at a cost of approximately three-tenths of 1 percent of that total. Absent the cleanup, the committee says that Bikini Island, which is historically the main residential island for the Bikini people, will have to remain off limits for as much as 125 years.

As I'm sure you know, Senator, during the 1970's, the U.S. Government conducted a cleanup of Enewetak Atoll, which was also the site of nuclear testing. The people of Enewetak are back on part of their atoll today. The people of Bikini ask for nothing more, nothing less.

The section 177 agreement is silent on the question of a cleanup. Now, Ambassador Zeder made a number of statements this morning about the U.S. commitment to assist in the cleanup of Bikini, and I think it would be useful just to make very clear for the record what is provided for in the compact and what is not.

During the negotiations on the compact, the people of Bikini requested the Marshall Islands government to ask for the cleanup and resettlement of Bikini Atoll. And to give credit to the Marshall Islands government, that request was passed through, and the Marshall Islands government sought to obtain that cleanup in its government-to-government negotiations.

They failed. And the compact today does not mention the cleanup of Bikini. It does provide for—there is a commitment by the U.S. government to resettle Bikini at a time which cannot now be determined, but there is no provision for a cleanup.

The compact also purports to terminate all claims of Marshall Islanders against the U.S. arising out of the nuclear testing program, and to prohibit the Bikini people from resorting to U.S. courts to seek to enforce the U.S. obligation to return them to their islands.

I think that this does constitute a break of commitments the United States made to the Bikinians, and I think it also is a clear violation of article 6 of the Trusteeship Agreement the United States signed in 1947 with the United Nations, pursuant to which the United States agreed to protect the inhabitants of Micronesia, quote, "against the loss of their lands and resources," unquote.

I submit that the United States in this document is walking away from its legal and moral responsibility to the people of Bikini and closing the doors of its courts to them.

Now, the people of Bikini gave the United States everything they had, their home, their land. They asked for nothing in return except that the land be returned to them when it had served its purpose. The United States promised this, and the United States also made a solemn promise to the United Nations that it would safeguard the land and the people.

Now, have we grown so cynical in this age that we fail to see the simple demand of justice in this case? Have we grown weary of the plight of these island people who bring their case not to the streets, they bring it to a Senate hearing room and they rely on treaties and agreements and promises? That is all they seek, is for the United States to live up to those commitments.

The United States has the blueprint to clean up Bikini, it has the resources and it had the technology, and, most importantly, it has the commitment made to the Bikini people and to the United Nations.

Now, let me be very clear about the Bikinian's view on the compact. Their message to you and to this committee is not to defeat the compact, it's not to amend the compact, rather to link the passage of the compact with the cleanup of Bikini. And I suggest that the best way to do that is to amend the Senate Joint Resolution 286, which is the compact as submitted by the administration, to provide for continuing congressional authorization for the cleanup of Bikini beyond the effective date of the compact, and this would permit Congress to fund the cleanup of Bikini if it so determined. Indeed, a request for the cleanup is pending right now before the House Appropriations Subcommittee and Senate Appropriations Subcommittee.

The House Interior Committee has already embraced this proposal by recommending a $10 million annual appropriation until the cleanup is accomplished.

This procedure of simply continuing this authorization by the Congress, I think, would be consistent, No. 1, with the compact in the section 177 agreement, which envisioned additional U.S. assistance under appropriate circumstances; No. 2, it would be consistent with the existing congressional open-ended authorization legislation for Micronesia, and it would simply extend that authorization into the post-Trusteeship period; No. 3, it would be consistent with the United Nations' Trusteeship Agreement, a point raised earlier this morning by Senator McClure; No. 4, it would be consistent with President Kabua's remarks before our lunch break today in which he supported efforts to clean up Bikini; and, No. 5, I think it would be consistent with the statements made earlier today by Ambassador Zeder and Mr. Berg.

Similarly, the Bikini people urge this committee to amend Senate Joint Resolution 286 to provide for continuing congressional authorization beyond the effective date of the compact in two other specific areas, continuation of the Burton Health Care Act, which is to provide health care for the people of Bikini, Enewetak, Rongelap, and Utirik and other atolls as the Secretary of the Interior may determine to have been affected by the nuclear testing program, and supplemental in USDA food for the people of Bikini.

And last, the Bikini people urge this committee to look for the amendment of Public Law 97-257, which established the resettlement trust fund for the people of Bikini. This would permit resettlement of the Bikini people outside of the Marshall Islands until such time as Bikini is deemed safe for resettlement. This amendment, which also was recommended by the House Interior Committee in its March 15 report to the Budget Committees, would involve no new expenditures of Federal funds. That trust fund already exists.

Mr. Chairman, the Bikini people feel that it is really the U.S. Congress over the years that has paid the most serious attention to these U.S. obligations to the Bikini people. They deeply appreciate your past efforts, and they hope that your committee will seriously consider these proposals as they have been outlined today. And on their behalf, I simply ask you to see that justice is done for the people of Bikini.

I would like Senator Balos to just make a few remarks, and then we would both be pleased to answer any questions you may have.

Senator MATSUNAGA. We would be happy to hear from you, Senator Balos.

STATEMENT OF HON. HENCHI BALOS, SENATOR, BIKINI ISLAND

Senator BALOS. Thank you, Senator.

Senator, I don't recall a time when the people of Bikini have ever appeared before this committee to express their problems. Therefore, I appreciate the opportunity this afternoon on behalf of the people of Bikini for allowing Mr. Weisgall and I to testify on the compact.

Second, Mr. Chairman, I would like to express our appreciation and thanks to President Kabua for his support of the cleanup of our islands. And, third, Mr. Chairman, I would also like to express our sincere and great sympathy to the American people who are affected by the nuclear aftermath in Nevada.

And lastly, Senator, I would, for the record, state my support for the passage of the compact and urge this committee to approve it.

Thank you, Senator.

[The prepared statement of Mr. Weisgall follows:]

STATEMENT OF JONATHAN M. WEISGALL
LEGAL COUNSEL TO THE PEOPLE OF BIKINI
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

May 24, 1984

Mr. Chairman and Members of the Committee:

Thank you for providing the people of Bikini an opportunity to testify before you today. With me today is Senator Henchi Balos, the elected representative of the people of Bikini to the Marshall Islands legislature. I have submitted for the record a longer statement which I will summarize briefly here.

The Bikini people have been moved five times by the United States in 38 years. The people were first moved off their atoll in 1946 to facilitate the U.S. nuclear testing program in the Marshall Islands. They were moved to Rongerik Atoll, where they nearly starved to death. As a result of these conditions, the United States moved the people to Kwajalein Atoll and then in September of 1948 to Kili Island, 425 miles south of Bikini. Kili has been their "temporary" home for nearly 36 years.

Kili is only one-third of a square mile, with a very narrow reef and no lagoon, as compared to Bikini's twenty-three islands, wide reef and 243-square mile lagoon. The Bikinians view Kili as a prison, because access to the island by ship is hazardous most of the year due to high surf conditions, making fishing and offloading of boats with food supplies sometimes impossible.

As a result of a 1967 Atomic Energy Commission study of Bikini, President Johnson announced in 1968 that Bikini could be safely resettled. Some Bikinians moved back to Bikini in 1969 and lived there until 1978, when tests by U.S. scientists revealed that the people on Bikini may have ingested the largest amounts of radiation of any known population, and they determined that it was necessary to move the people off the island. The AEC was dead wrong in 1967. In August 1978, U.S. ships once again entered Bikini lagoon, and the inhabitants were forced to pack up their possessions and leave. Some were relocated to Ejit Island in Majuro Atoll, while others were moved back to Kili. The United States has not permitted anyone to reside on Bikini Atoll since then.

The United States conducted 23 announced nuclear tests at Bikini Atoll. Each test represented a major advance in military planning for the defense of our country. They assured our nuclear superiority over the Soviet Union and led to immediate savings of billions of dollars in the defense budget in the late 1940's and 1950's. As the AEC stated in its 1953 report to Congress:

> Each of the tests involved a major expenditure of money, manpower, scientific effort and time. Nevertheless, in accelerating the rate of weapons development, they saved far more than their cost.

It has been the view of the Bikini people since 1946 that the U.S. Government would care for them until such time as they could safely return to their homeland. Indeed, the U.S. Government accepted this responsibility as late as August 1978, when the Undersecretary of the Interior, High Commissioner, and Director of Interior's Office of Territorial Affairs signed a "Statement of Understanding" on the move of the people of Bikini, which stated in part: "The Government of the United States considers itself generally responsible for the well being of the Bikini people and their descendants . . . ."

Notwithstanding this agreement, the Compact and the Section 177 agreement fundamentally alter that relationship by terminating direct U.S. Government care for the Bikini people and passing the buck to the Government of the Marshall Islands. But it was the United States, not the Marshalls Islands Government, that took possession of Bikini Atoll, rendered it uninhabitable, and promised to care for its people until they could return. And the United States, not the Marshall Islands Government, has the wherewithal to clean up Bikini.

The Bikinians voted 90% against the Compact. The Compact provides them with compensation, but it fails to discharge the legal and moral responsibilities of the United States towards them, the most important of which is the cleanup of Bikini.

In 1982 Congress appropriated funds for a study on the feasibility and estimated cost of cleaning up Bikini Atoll.

The Bikini Atoll Rehabilitation Committee issued its interim report last November, and in testimony before the House three weeks ago, the chairman of the Committee stated that it is technologically feasible to clean up Bikini and Eneu, the two main residential islands, at a cost as low as $60 million. The cost of contaminating Bikini -- of conducting the weapons tests there -- was about $91 billion measured in today's dollars. The price of cleaning it up is about three-tenths of one percent of that. Absent a cleanup, the Bikinians will have to wait about 125 years before they can safely return to Bikini Island.

In the late 1970's, the U.S. Government conducted a cleanup of Enewetak Atoll in the Marshall Islands, which was also used for U.S. nuclear testing. The people of Enewetak are back on part of their atoll today. The people of Bikini are entitled to no less.

The Section 177 agreement, however, is silent on the cleanup of Bikini. It also purports to terminate all claims of Marshall Islanders against the United States arising out of the U.S. nuclear testing program and to prohibit the Bikinians from resorting to U.S. courts to enforce the U.S. obligation to return them safely to their islands. This constitutes a breach of the U.S. commitment to return the Bikinians to their homeland and is a blatant violation of Article 6 of the Trusteeship

Agreement the United States signed with the United Nations, under which the United States agreed to protect the inhabitants of Micronesia "against the loss of their lands and resources." The United States, I submit, is walking away from this responsibility and closing the doors of its courts on its beneficiaries.

The people of Bikini gave the United States everything they had -- their land and their home. They demanded nothing in return; they asked only that their land be returned to them when it had served its purpose. The United States promised them that it would do so, and a year later it promised the United Nations that it would safeguard the land and its people.

Have we grown so cynical in this age that we fail to see the simple demand of justice in this plea? Have we become so insensitive in a world of superpowers that we grow weary at the plight of a tiny island people? Have we become so accustomed to protest by threats and weapons that we have grown deaf to the plea of a peaceful people, who bring their case not to the streets but to this Senate hearing room? Do we tell them that the crude bomb of the terrorist will gain the world's notice but that reliance on treaties and agreements and promises will go unheeded?

The United States must commit itself to clean up Bikini. It has the blueprint. It has the resources. It has the technology. Most importantly, it has the obligation -- not only the vow it made to these people in 1946, but the solemn covenant it made to the United Nations in 1947 when it took this land in trust.

The Bikinians' message to this Committee is not to defeat the Compact and not to change the Compact, but rather to link passage of the Compact with the cleanup of Bikini. I urge you to do this by amending S.J. Res. 286 to provide for continuing Congressional authorization for the cleanup of Bikini beyond the effective date of the Compact. This would permit Congress to fund the cleanup, if it so determined. The House Interior Committee has, in essence, embraced this proposal by recommending a $10 million annual appropriation until the cleanup is accomplished. Such an amendment, I submit, would be consistent with the Compact and the Section 177 agreement, which envision additional U.S. assistance under appropriate circumstances. This amendment would also be consistent with Congress' existing open-ended authorization legislation for Micronesia; it would simply extend that authorization into the post-Trusteeship period.

Similarly, I urge you to amend S.J. Res. 286 to provide continuing Congressional authorization beyond the effective date of the Compact for two other matters -- continuation of the Burton Health Care Act and for U.S.D.A and supplemental food for the people of Bikini. Lastly, the people of Bikini urge your Committee to work to amend the language of Public Law No. 97-257, which established the Resettlement Trust Fund for the People of Bikini, to permit resettlement of the Bikini people outside the Marshall Islands until such time as Bikini is deemed safe for resettlement. This amendment, which was recommended by the House Interior Committee in its March 15 report to the Committee on the Budget, would involve no new expenditure of federal funds, since the trust fund has already been established under 1982 funding.

* * *

The executive branch has not kept its promises to the Bikinians. Only the Congress has paid serious attention to U.S. obligations to the Bikini people. The Bikinians deeply appreciate your past efforts, and hope that your Committee will help to implement the proposals outlined today. On their behalf, I ask you to see that justice is done.

I would be pleased to answer any questions you may have.

STATEMENT OF JONATHAN M. WEISGALL
LEGAL COUNSEL TO THE PEOPLE OF BIKINI
BEFORE THE SENATE ENERGY AND
NATURAL RESOURCES COMMITTEE

May 24, 1984

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STATEMENT OF JONATHAN M. WEISGALL
LEGAL COUNSEL TO THE PEOPLE OF BIKINI
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

May 24, 1984

Mr. Chairman and Members of the Committee:

Thank you for providing the people of Bikini an opportunity to testify before you today on the Compact of Free Association. I will focus my testimony on the Section 177 agreement under the Compact, which seeks to resolve the many nuclear claims issues in the Marshall Islands.

In order for this Subcommittee to understand fully the feelings of the Bikinians today, I must take you back in history to appreciate what Bikini meant to the United States in the 1940's and 1950's, what the United States told the Bikinians over the years about its obligations toward them, and the process by which the United States negotiated the present Section 177 agreement.

I. THE ATOMIC BOMB AND WORLD WAR II

On July 16, 1945, the United States detonated the world's first atomic bomb at Alamogordo in the New Mexico desert. The fireball was so bright, President Truman was told, that a blind woman forty miles away saw the light.1/ Truman was told the news on the eve of the Potsdam Conference, where he was about

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1/ Martin J. Sherwin, A World Destroyed: The Atomic Bomb and the Grand Alliance 223 (1973).

to meet Stalin for the first time. Germany had already surrendered, but the war against Japan dragged on, and the news from New Mexico quickly changed Truman's view about wanting the Russians to join the war in the Pacific. As Secretary of War Stimson later recalled, "The news from Alamogordo . . . made it clear to the Americans that further diplomatic efforts to bring the Russians into the Pacific War were largely pointless."[2] Winston Churchill was "completely carried away" with the news, and later reflected: "We now had something in our hands which would redress the balance with the Russians."[3]

Three weeks later, the second bomb was finally assembled, and the next day, August 6, a B-29 bomber dropped it over Hiroshima. The city was totally destroyed. Over 70,000 people were killed within two minutes, and tens of thousands died later of radiation poisoning, including twelve U.S. Navy men imprisoned in the city jail.[4] When President Truman received the news, he declared, "This is the greatest thing in history,"[5] and said he had never

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2/ Henry L. Stimson and McGeorge Bundy, On Active Service in War and Peace 637 (1948). See also Robert J. Donovan, Conflict and Crisis: The Presidency of Harry S Truman, 1945-1948, at 93-94 (1977).

3/ Arthur Bryant, Triumph In the West: Based On the Personal Diaries of Field Marshall Lord Alan Brooke 363-64 (1959).

4/ Sherwin, A World Destroyed, supra note 1, at 232.

5/ Harry S Truman, Year of Decisions 421 (1955).

been happier about any news in his life.[6] His announcement from Washington stated: "We are now prepared to obliterate more rapidly and completely every productive enterprise the Japanese have above ground in any city."[7] On August 9, the third atomic bomb was dropped on Nagasaki, and Japan surrendered five days later. The atomic age had begun.

II. THE 1946 BIKINI TESTS

A. The Choice of Bikini

The atomic bomb represented a quantum leap in the technology of warfare. It suddenly made the rules of geography meaningless, and it wiped out all the previously known rules of warfare. It immediately changed the post-war balance of power between the United States and the Soviet Union, but the United States had little knowledge of the force and effects of these weapons.

More testing of atomic weapons was needed. As the Atomic Energy Commission (AEC) explained in its 1948 report to Congress: "America's pre-eminence in the field of atomic weapons . . . depends upon . . . the observation by scientists of nuclear phenomena that can only adequately be studied by actual full scale test operations."

Thus, on November 10, 1945, the Joint Chiefs of Staff began to plan a series of atomic tests, code-named Operation Crossroads.

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[6] *See* Merriman Smith, *Thank You, Mr. President, A White House Notebook* 257-58 (1946). *See also* August 6, 1975 United Press story filed from the *U.S.S. Augusta* by Merriman Smith.

[7] *Public Papers of the President of the United States: Harry S Truman, 1946*, at 197-98.

The Joint Chiefs directed the commander of the texts to select "a suitable site which will permit accomplishment of the test with acceptable risk and minimum hazard."[8] On January 10, 1946, President Truman approved the Joint Chiefs' decision; to quote the ironic words of the official U.S. history of the tests, "Bikini won out."[9]

The United States acted with extraordinary speed and logistical planning to implement Operation Crossroads. The Bikinians were quickly moved off their atoll, and thousands of men were moved in. All in all, Operation Crossroads involved 42,000 men, 242 ships, 156 airplanes, 25,000 radiation recording devices, and 5,400 experimental rats, goats and pigs.[10]

B. The Onset of the Cold War

Meanwhile, events in early 1946 made the upcoming tests at Bikini a critical part of American diplomatic strategy. The Cold War had set in, and Russia's expansionist aims were becoming clear. Red Army troops remained in eastern Europe, and Stalin refused to evacuate Russian soldiers from Iran. Truman ordered the battleship *Missouri* to Turkey in late February as a signal to the Russians.

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[8] W. A. Shurcliff (Historian of Joint Task Force One), *Bombs at Bikini: The Official Report of Operation Crossroads* 15 (1947).

[9] *Id.* at 17.

[10] *Id.* at 2. *See also* W. A. Shurcliff, *Operation Crossroads: The Official Pictorial Record* 9 (1946).

On February 22, George Kennan sent his now-famous cable from Moscow stating that the Soviet Union could foresee "no permanent peaceful coexistence" with capitalism. The "neurotic" Kremlin leaders were no different from the czars, Kennan declared; Marxism was just "the fig leaf of their moral and intellectual respectability."[11/] Less than two weeks later, in the course of his celebrated "Iron Curtain" speech, Churchill called for a revival of the wartime Anglo-American alliance against a new enemy -- Russia.

The United Nations Atomic Energy Commission was scheduled to meet in June, and the U.S. delegate, Bernard Baruch, was prepared to offer a plan for the international control of atomic weapons on terms that would have prevented the Russians from developing their own atomic bomb. The Baruch Plan, as it was called, also included "prompt and certain" punishment -- including atomic attack - upon violators of the plan.[12/]

U.S. military leaders wanted to test the first bomb at Bikini in May, but Secretary of State Byrnes convinced Truman to delay the test until after the opening of the upcoming U.N.

11/ George F. Kennan, Memoirs, 1925-1950, at 547-49 (1967).

12/ See generally Donovan, Conflict and Crisis, supra note 2, at 204-06; Gregg Herken, The Winning Weapon: The Atomic Bomb in the Cold War 1945-1950 at 151-73 (1981); Bert Cochran, Harry Truman and the Crisis Presidency 281-84 (1973); Peter Pringle and James Spigelman, The Nuclear Barons 49-55 (1981).

meeting.[13] On June 14, Baruch presented the U.S. plan before the United Nations General Assembly. "Before a country is ready to relinquish any winning weapons," as Baruch called the atomic bomb, "it must have more than words to reassure it."[14] On June 19, the Russian delegate, Andrei Gromyko, offered a counterproposal that provided for neither inspection nor sanctions. On July 5, Baruch rejected the Russian counteroffer. However, as one historian has noted, "Baruch's formal rejection of the Gromyko plan may have seemed unnecessary to the Russians,"[15] since the first U.S. atomic test had occurred four days earlier at Bikini. In the weeks that followed, the gap between the two sides grew, and on July 25 the United States detonated the second Bikini shot. The Russians saw no coincidence in the timing: "The atomic bomb . . . exploded something more important than a couple of out-of-date warships," Pravda observed; "it fundamentally undermined the belief in the seriousness of American talk about atomic disarmament."[16] The Soviet Union voted against the plan on December 31, and an atomic curtain fell on international control of nuclear weapons.

13/ John Morton Blum, ed., The Price of Vision: The Diary of Henry A. Wallace 565-66 (1973).

14/ New York Times, June 15, 1946. The full text is in U.S. Department of State, The International Control of Atomic Energy: Growth of a Policy 138-47 (1946).

15/ Herken, The Winning Weapon, supra note 12, at 173.

16/ The Pravda article is quoted in Joseph Nogee, Soviet Policy Toward International Control of Atomic Energy 62 (1961).

C. The Military Value of the 1946 Bikini Tests

The atomic bomb represented America's only real weapon against Russia's immense army. President Truman stressed this point in his statement concerning preparations for the Bikini tests:

> [T]hese tests are of vital importance in obtaining information for the national defense. Without the information from these experiments, designers of ships, aircraft and military ground equipment, as well as our strategists, technicians, and medical officers, will be working in ignorance regarding the effects of this revolutionary new weapon against naval and other targets not previously exposed to it. These tests, which are in the nature of a laboratory experiment, should give us the information which is essential to intelligent planning in the future and an evaluation of the effect of atomic energy on our defense establishment.17/

The results of the Bikini tests rapidly changed military thinking. Secretary of War Patterson declared that "[t]he conclusions as to the effect of the atomic bomb are clearly revolutionary and affect things up and down the line,"18/ and General Carl Spaatz echoed this belief: "The atomic bomb, because of its decisive nature, is now an essential part of our military strength."19/

As a result of the Bikini tests, the atomic bomb quickly came to play a critical role in American military planning. In March

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17/ *Public Papers of the President*, *supra* note 7, at 199-200.

18/ Quoted in Daniel Yergin, *Shattered Peace: The Origins of the Cold War and the National Security State* 265 (1977).

19/ *Id.*

1947, Secretary Patterson wrote that the War Department "is already following a policy that assumes the unrestricted employment of atomic energy as a weapon."[20] Five months later, the Pentagon drew up a new plan for war with Russia. It relied almost entirely on the use of nuclear weapons, an important change from the previous plan, drafted just before the first Bikini tests.

In 1948, President Truman cut the Joint Chiefs' defense budget request from $23 billion to $14.4 billion by increasing atomic bomb production and cutting the size of conventional forces so deeply that the only emergency operation the United States could mount would be an atomic air offensive. Over 58 percent of the defense budget was allocated to the Air Force, largely to build more planes capable of delivering atomic bombs.[21] As one historian has noted, Truman's action "thus made the United States virtually dependent on the atomic bomb."[22] The budgetary attractiveness of the atomic bomb was reinforced by a 1946 Bell Telephone Laboratory study that indicated that atomic bombing was 10 to 100 times less expensive than conventional strategic bombing and many times more effective.[23] All of these savings were directly attributable to

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[19] Id.

[20] Quoted in Herken, The Winning Weapon, supra note 12, at 226.

[21] Yergin, Shattered Peace, supra note 18, at 266.

[22] David A. Rosenberg, "American Atomic Strategy and the Hydrogen Bomb Decision," 66 Journal of American History 62, 69 (June 1979).

[23] Id. at 67.

the changes in military planning that resulted from the 1946 Bikini tests.

III. BIKINI IN THE 1950'S

A. The 1954 Bravo Shot

Bikini would not be used again for nuclear testing until 1954. In November 1950, after the outbreak of the Korean War, the National Security Council, concerned that the Russians or Chinese might invade Bikini or Enewetak, recommended a site in Nevada for further tests.[24/] The return to the Pacific was occasioned by America's decision to develop the hydrogen bomb, a weapon triggered by the 100 million-degree heat of an atomic bomb. With a force much greater than the atomic bomb, the AEC could not risk testing the new weapon in the continental United States.

The world's first hydrogen bomb was tested at Enewetak on November 1, 1952, but it was not a useable weapon. The device was larger than a two-story house, weighed 65 tons, and required a massive refrigeration unit to keep the hydrogen fuel in a liquid state until detonation. A better bomb was needed.

The Russians had tested their first atomic bomb in 1949. Then, in August 1953, U.S. scientists detected the first Russian hydrogen explosion. President Eisenhower told the American people that the

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24/ Pringle and Spigelman, The Nuclear Barons, supra note 12, at 180, 500-01.

Russians now possessed "the capability of atomic attack upon us, and such capability will increase with the passage of time."[25] What President Eisenhower failed to tell the American public was that the Russian device did not require unwieldy refrigeration and could be placed in an airplane. The Soviets had not only caught up with American nuclear technology; they had actually moved ahead, and America had to develop and test a hydrogen bomb capable of delivery by aircraft.[26]

The result was the Bravo shot, detonated at Bikini on March 1, 1954. Bravo, with an explosive force equal to nearly 1,000 Hiroshima-type atomic bombs, was the largest man-made explosion in the history of the world, more than twice what its designers expected.[27] It vaporized the entire test island and parts of two others, sucked them 20 miles into the air, and gouged out a crater in the reef one mile wide and 200 feet deep.[28] The blast

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25/ Quoted in Lewis Strauss, *Men and Decisions* 345-46 (1962). *See also* Robert A. Divine, *Blowing On the Wind: The Nuclear Test Ban Debate, 1954-1960*, at 16-17 (1978).

26/ H. F. York, "The Debate Over the Hydrogen Bomb," *Scientific American*, Vol. 233, No. 4 (October 1975).

27/ *New York Times*, April 2 and 3, 1954; *The Bulletin of the Atomic Scientists*, June, 1954, at 228; Pringle and Spigelman, *supra* note 12, at 243-44; Divine, *Blowing On the Wind*, *supra* note 25, at 17; Strauss, *Men and Decisions*, *supra* note 25, at 411.

28/ Edwin J. Martin and Richard H. Rowland, *Castle Series, 1954* 205 (1982) (published by U.S. Defense Nuclear Agency).

destroyed most of the buildings and scientific equipment on an island fourteen miles across Bikini's lagoon, and the illumination from the fireball was visible for nearly a minute on Rongerik Atoll, 125 miles east of the burst.[29/]

Moreover, what was described at the time -- falsely, it turns out -- as an unpredicted shift in wind direction sent the fallout eastward over Bikini Island and 240 miles beyond, sprinkling 28 American servicemen on Rongerik and the 236 inhabitants of Rongelap and Utirik with radioactive particles from Bikini. The legacy of Bravo is, more than any single event, the main reason we are here today. Bikini Island might be habitable today but for the alleged wind shift after the Bravo shot.

B. The Bravo Coverup

The AEC immediately sought to cover up aspects of the Bravo shot, and we still do not know all the facts today. Twelve days after the explosion the AEC announced that "[d]uring the course of a routine atomic test," some Marshallese "were unexpectedly exposed to some radioactivity," but "[t]here were no burns" and "[a]ll were reported well."[30/] Four months later, the AEC reported that "there is no reason to expect any permanent aftereffects on the general health of these people."[31/] Lewis Strauss, the chairman

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[29/] Id.

[30/] Quoted in Neil Hines, Proving Ground: An Account of the Radiobiological Studies in the Pacific, 1946-1961, at 169 (1962).

[31/] Sixteenth Semiannual Report of the Atomic Energy Commission 52 (1954).

of the AEC, wrote: "Before the end of 1954, we had conducted medical follow-ups on the Marshallese natives. They had continued in excellent health."[32/]

In fact, 90% of the Rongelapese suffered skin lesions and loss of hair; many later developed thyroid tumors or other radiation-related illnesses, and there has been one leukemia death.

Meanwhile, unknown to the AEC, fallout from Bravo showered a Japanese fishing boat, named the Lucky Dragon, located 85 miles east of the blast. The 23 crew members suffered severe radiation sickness, and one died seven months later from the effects of the poisoning. Although the U.S. government quickly paid $2 million in compensation to the crew members, it asserted that the dead crew member died from jaundice, not radiation exposure, despite the fact that the autopsy revealed significant amounts of radioactive elements in his liver and bone marrow.[33/] Strauss confided to President Eisenhower's press secretary that, despite the 800 pounds of tuna on the Lucky Dragon, it was really a "Red spy outfit" snooping on the American tests,[34/] and he publicly accused the ship of "inadvertent trespass."[35/]

[32/] Strauss, Men and Decisions, supra note 25, at 412-13.

[33/] New York Times, April 10, June 8, September 24, 25, October 4, 1954; January 4, 5, March 26, August 23, 1955; Newsweek, September 13, 1954, at 52-54.

[34/] James C. Hagerty Diaries, April 2 and 6, 1954, papers in Eisenhower Library; quoted in Divine, Blowing On the Wind, supra note 25, at 11.

[35/] Pringle and Spigelman, The Nuclear Barons, supra note 12, at 245.

Thirty years ago this month, a group of Marshallese citizens, including a Bikinian, submitted a moving petition to the U.N. Trusteeship Council "regarding the explosion of lethal weapons within our home islands." Stating that the document "should not be misconstrued as a repudiation of the United States," the Marshallese leaders asked that the testing be ceased. If, however, the "experiments" were deemed "absolutely necessary for the eventual well being of all the people of the world," they requested that all possible precautionary measures be taken.[36/]

The U.N. Ambassador, Henry Cabot Lodge, Jr., expressed official sympathy on behalf of the United States, but the High Commissioner, Frank E. Midkiff, was less gracious. In a May 18, 1954 letter to the Interior Department, he described the petition as "one of the things the Micronesians are so fond of doing -- passing resolutions and getting up petitions. They spend a great deal of time doing just that."

But the crime of Bravo -- and I do not use this term lightly -- is that the U.S. Government knew in advance of the shot that the winds were headed in the wrong direction. The explanation about an "unpredicted" wind shift was a lie. According to a recently-released Defense Nuclear Agency report on Bravo, the weather briefing at 11 a.m. the day before the shot predicted "no significant fallout . . . for the populated Marshalls." At 6 p.m., however, "the predicted

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[36/] United Nations Trusteeship Council, T/PET.10/28, 6 May 1954.

winds were less favorable; nevertheless, the decision to shoot was reaffirmed, but with another review of the winds scheduled for [midnight]."[37/]

The midnight briefing "indicated less favorable winds at 10,000-to 25,000-foot levels." Winds at 20,000 feet "were headed for Rongelap to the east," and "it was recognized that both Bikini and Eneman islands would probably be contaminated."[38/] In other words, the United States deliberately detonated Bravo knowing that it would contaminate lands -- and people -- that it held and protected under a sacred trust with the United Nations.

Altogether, the United States detonated 23 announced nuclear devices at Bikini between 1946 and 1958, when President Eisenhower declared a moratorium on U.S. atmospheric nuclear testing. Each test was approved and reviewed by President Truman or President Eisenhower, and each test represented a major advance in military planning for the defense of the United States. The tests cost at least $20 billion through 1954, but the United States never questioned their value, because they assured U.S. nuclear superiority over the Soviet Union and led to immediate savings of billions of dollars in the defense budget in the late 1940's and 1950's. As the AEC stated:

[37/] Martin and Rowland, Castle Series, 1954, *supra* note 28, at 22.

[38/] *Id.*

> Each of the tests involved a major expenditure of money, manpower, scientific effort and time. Nevertheless, in accelerating the rate of weapons development, they saved far more than their cost.39/

Bikini was a real bargain for the United States."

We still do not have all the facts on Bravo and the other tests at Bikini. For example, the official U.S. position is that there were 23 "announced" tests at Bikini. Does this mean that unannounced tests were held there? If so, how many, when and where were they held and what were their yields? Using the Freedom of Information Act, I have sought -- with limited success -- to learn the answers to these and other questions about the tests at Bikini, and I urge you to ask these questions of the witnesses from the Department of Energy or Defense Nuclear Agency.

The U.S. Government has sought in the Section 177 agreement to put a price tag on its nuclear legacy in the Pacific and close the books on this sorry bit of history. If Congress is to pass judgment on the agreement, it seems only fair that it should have before it all the pertinent facts on the testing program.

IV. THE BIKINIANS' ODYSSEY: 1946-1984

That, then, is one side of the story. The Bikinians lived up to their side of the deal, and gave up their atoll to the United States. What has become of them?

39/ Fifteenth Semiannual Report of the Atomic Energy Commission 18 (1953).

Their sad odyssey is well known. They were moved first to Rongerik Atoll, 125 miles east of Bikini, where they nearly starved to death. In March 1948, the United States moved the people to Kwajalein Atoll and then in September of that year to Kili Island, 425 miles south of Bikini. Kili has been their "temporary" home for nearly 36 years.

Kili, as you know, is only one-third of a square mile, with a very narrow reef and no lagoon, as compared to Bikini's twenty-three islands, wide reef and 243-square mile lagoon. The Bikinians view Kili as a prison, because access to the island by ship is hazardous most of the year due to high surf conditions, making fishing and offloading of boats with food supplies sometimes impossible.

As a result of a 1967 AEC study of Bikini, President Johnson announced in 1968 that Bikini Atoll was "safe for human habitation," and he ordered Bikini rehabilitated and resettled "with all possible dispatch."[40/] Bikinians lived on Bikini Island between 1969 and 1978, when tests by U.S. scientists revealed that the people on Bikini may have ingested the largest amounts of radiation of any known population, and they determined that it was necessary to move the people off the island. The AEC was dead wrong in 1967.

[40/] Quoted in Jonathan M. Weisgall, "The Nuclear Nomads of Bikini Atoll," 39 Foreign Policy 74, 85 (1980).

History sadly repeated itself in August 1978, as U.S. ships once again entered Bikini lagoon, and the inhabitants packed up their possessions and left. Some were relocated to Ejit Island in Majuro Atoll, while others were moved back to Kili. The United States has not permitted anyone to reside on Bikini Atoll since then.

The Bikinians have consistently made known to the United States their dissatisfaction with Kili and their desire to return to Bikini. For example, on December 14, 1969, the Bikini Magistrate wrote to the High Commissioner:

> On Bikini we were responsible for our lives but the United States chose to move us, taking the responsibility for our welfare in their hands. They have forced us to depend on their ships for our lives. We have been humiliated by being put in a place that forces us to beg for help. We ask that the United States discontinue to neglect their responsibility.
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> Our houses are falling down around us as we cannot afford to buy material to repair them because most of our income is spent on food. We are starving during the winter months. Is this the way the United States treats the people who have sacrificed everything to help America with her research? We trusted the Navy with our lives; are we to believe that the United States has turned away from that trust?

In response to these charges of neglect, the High Commissioner wrote the Department of Interior stating that "the Government had the complete right to commit waste, make permanently unusable, alter and destroy the islands in the atoll or portions thereof in the testing of nuclear weapons."

V. THE SECTION 177 AGREEMENT

With this background, let me turn to the Section 177 agreement. The people of Bikini voted over 90% against the Compact of Free Association, largely because of the Section 177 agreement. In explaining their opposition and reviewing the agreement, I hope to suggest reasonable ways to improve the agreement and create a solid legislative history to resolve certain ambiguities in the document.

A. Continued U.S. Care for the Bikinians

It has been the view of the Bikini people since 1946 that the U.S. Government would care for them until such time as they could safely return to their homeland. Indeed, the U.S. Government accepted this responsibility as late as August 1978, when the Undersecretary of the Interior, High Commissioner, and Director of Interior's Office of Territorial Affairs signed a "Statement of Understanding" on the move of the people of Bikini. This document provides in part: "The Government of the United States considers itself generally responsible for the well being of the Bikini people and their descendants . . . ."

Notwithstanding this agreement, the Compact and the Section 177 agreement fundamentally alter that relationship by terminating direct U.S. Government care for the Bikini people and passing the buck to the Government of the Marshall Islands. But it was the United States, not the Marshall Islands Government, that took possession of Bikini Atoll, rendered it uninhabitable, and promised to care for its people until they could return. And the United States, not the Marshall Islands Government, has the wherewithal to clean up Bikini.

B. The Process of Government-to-Government Negotiations

The Section 177 agreement was negotiated by two parties, the Government of the United States and the Government of the Marshall Islands, as provided in Section 177(b) of the Compact. The people of Bikini were sometimes invited to participate in the negotiations and sometimes were not. The Marshall Islands Government promised the Bikinians that it would never espouse their legal claims and that any agreement with the United States would be subject to their approval. These promises were not kept.

On May 30, 1982, Ambassador Zeder and President Kabua signed a Section 177 agreement in Honolulu. The people of Bikini were excluded from these negotiations and were not even informed of the Honolulu meeting, leaving the two governments to resolve their fate. One government -- the United States -- caused the damage at Bikini and the suffering of the people. Its goal was to terminate the Bikinians' pending lawsuit for damages and bar future access to U.S. courts by Bikinians seeking to have their atoll cleaned up. The other government, the Marshall Islands, did not cause the problems at Bikini and cannot solve those problems. It was, and to an extent still, is, in desperate financial condition, and its main goal was -- and still is -- to obtain the high levels of funding offered to it by the United States. One government sought to limit its liability and responsibilities, the other to solve its financial problems. Neither represented the Bikinians' best interests, and the Bikinians were excluded from this process.

That agreement was later scrapped and a new one negotiated. Let me be very precise about the process: Ambassador Zeder's office always maintained an open-door policy, and I took advantage of that to inform the Ambassador and his staff of the Bikinians' views. But at no time were the people of Bikini officially made a party to the negotiations with a right to say yes or no to the Section 177 agreement.

The people of Bikini have two lawsuits pending against the United States. One seeks just compensation under the Fifth Amendment for the destruction of Bikini and the other seeks an injunction to force the United States to clean up Bikini. The Section 177 agreement, by its own terms, purports to be a settlement of these and all other claims between the United States and the Marshall Islands Governments. But the Marshalls Government did not file the lawsuit and is not a party to the suit. The Bikinians filed the suit, and any settlement discussions should be between the U.S. Government and them, not an intermediary. The Bikinians did not authorize these governments to settle their lawsuit.

Let me put this matter into an analagous context. Let us suppose that you own a farm in Montgomery County, Maryland, and the U.S. Government, over a period of years, dumps toxic wastes on your property, ruining your farm. You bring lawsuits against the United States seeking just compensation under the Fifth Amendment and a cleanup. The United States and the Montgomery County Government, without your consent or authorization, proceed to settle your lawsuits as part of overall negotiations on federal funding for Montgomery County's highways, law enforcement, governmental operations, capital improvements, and the like.

This would be ridiculous, you say. How can those two governments settle your lawsuit without your consent? Well, that is how the Bikinians' claims were settled. So much for due process.

C. Espousal

The key to the Section 177 agreement is the espousal provision, Article X, Section 1, which provides:

> This Agreement constitutes the full settlement of all claims, past, present and future, of the Government, citizens and nationals of the Marshall Islands which are based upon, arise out of, or are in any way related to the Nuclear Testing Program, and which are against the United States . . . .

In other words, in return for everything the United States provides in the Section 177 agreement, the Marshall Islands Government will espouse, or take over, all the Bikinians' claims, terminate their two pending lawsuits and bar any future ones.

You must understand, however, that the Section 177 agreement was not a quid pro quo bargain, trading lawsuits for settlements. The Section 177 agreement is only one part of the entire Compact package, which provides upwards of $750 million to the Marshall Islands Government. The U.S. Government did not want to face these lawsuits from the Bikinians, so it told the Marshalls Government that unless the nuclear claims were settled and espoused on U.S. terms, the Marshalls Government would not get the $750 million. What was the Marshalls Government supposed to do? Reject the $750 million package because the Bikinians, who represent less than three percent of the population, were being shortchanged? Of course not. The U.S. Government forced the Marshalls Government into a position where the Marshalls could not look at the nuclear settlement separately and accept it or reject it on its own merits. The nuclear settlement was part of the whole Compact package, and with the United States offering $750 million, the Marshalls Government took the whole package, nuclear claims and all.

The U.S. view is that the espousal provision will close the doors of its courts against the Bikinians' two pending lawsuits and any future claims. I think this is wrong as a matter of international law and that it deprives the Bikinians of their constitutional rights. I urge the Committee to study this issue carefully and express its views on the validity of this provision, and to ask the United States to justify its legal position.

D. Cleanup of Bikini

The Section 177 agreement not only ignores the cleanup of Bikini, but also purports to prohibit the Bikinians from resorting to U.S. courts to enforce the U.S. obligation to return them safely to their islands. The Bikinians live today, as they have since 1946, as nomads and exiles. The United States has the legal obligation and the technological ability to clean up Bikini, but it is resisting all pleas that it do so. And if the Compact becomes effective as it now reads, there will be one less restraint on its deplorable attempt to walk away from this obligation.

The American official sent to Bikini in 1946 to tell the Bikinians they had to leave their quiet atoll compared the Bikinians to the children of Israel and told them that the Lord was leading them to the promised land. This was a cruel device. The United States led the Bikinians out of their promised land.

When it led them away, the United States promised the Bikinians it would return them home when it was safe to do so, and the following year it signed a solemn pledge with the United Nations and the world community to protect these people against the loss of their lands and resources. The United States has not honored that pledge. Bikini will not be safe for as long as 125 years -- long after the death of any Bikinians now alive.

If this pathetic situation had been beyond the control of the United States, or if it were today beyond its abilities or its means to correct, then perhaps Ambassador Zeder could stand before you and say:- It is regrettable, but there is nothing we can do. And this Subcommittee would probably agree: It is regrettable, but nothing can be done.

But that excuse is not available. An independent committee of eminent scientists, chaired by Professor Henry I. Kohn of Harvard University, was directed by Congress in 1982 to determine the feasibility and cost of decontaminating Bikini Atoll. The committee issued its interim report last November, and on May 1 Professor Kohn told the House Interior Appropriations Subcommittee that Bikini can be cleaned up and that the cost may be as low as $60 million.

You will recall that the cost of contaminating Bikini was $20 billion -- through 1954 -- or about $91 billion in today's dollars. The price of cleaning it up is about three-tenths of one percent of that, but the executive branch is unwilling to pay. This irresponsible and high-handed refusal is an outright breach of the United States' commitment to return the Bikinians to their homeland. It is also a blatant violation of Article 6 of the U.N. Trusteeship Agreement signed by the United States, under which the United States agreed to "protect the inhabitants against the loss of their lands and resources."[41] No one in this room can deny that the United States has breached that obligation.

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[41] See Article 6 of the Trusteeship Agreement for the Former Japanese Mandated Islands, 61 Stat. 3301, 80th Cong. 1st Sess. (1947), T.I.A.S. No. 1665.

If Bikini had been devastated by a natural disaster, the U.S. obligation under the U.N. Trusteeship Agreement would be clear: to take whatever steps were necessary to assist the people. But instead the damage is the result of the United States' own acts of destruction. Does the obligation to protect and preserve disappear? Does the Trusteeship Agreement oblige the United States to safeguard these lands unless it chooses to destroy them? That is a mockery of justice and common sense.

Neither the Congress nor the executive branch can look at this record with pride. We are at the eleventh hour; indeed we are well into it. So I come before you, representing a good and gentle people who came so abruptly into the nuclear age and who now seek only that which was promised them so long ago. Their request is simple and manageable: Clean up Bikini so they can return home.

The House Interior Committee has already recommended this course of action, and the matter is currently pending before the appropriations committees. I can suggest two legislative methods to accomplish the cleanup of Bikini. The first -- and preferable -- means, which would not require any changes in the Compact, would be to amend S.J. Res. 286 to provide for a continuing Congressional authorization for the cleanup of Bikini beyond the effective date of the Compact. This would permit Congress to fund the cleanup, if it so determined. The House Interior Committee has, in essence, embraced this proposal by recommending a $10 million annual appropriation through the Interior Department until the cleanup is accomplished. The second proposal which I suggested before Mr. Seiberling's House Interior Subcommittee on February 7, is a variation on that idea: to appropriate the $10 million annually and legislate that these funds shall be paid back to the U.S. Treasury by the Claims Tribunal beginning in the sixteenth year of the Compact, the first year that any significant funds will be available to the Tribunal. This proposal, however, is opposed by the Marshall Islands Government, which has stated in testimony that "[l]egislation, at this time, to compel the Claims Tribunal to grant such an award would require ratification by the people of the Marshall Islands in another Compact plebiscite."

In the late 1970's, the U.S. Government conducted a cleanup of Enewetak Atoll in the Marshall Islands, which was also used for U.S. nuclear testing. The people of Enewetak are back on their atoll today. The people of Bikini are entitled to no less. Absent a cleanup, the Bikinians will have to wait about 125 years before they can safely return to Bikini Island.

In sum, I urge this Committee to take all steps it can to link passage of the Compact with the cleanup of Bikini. The people of Bikini also urge your Committee to continue to work to amend the language of Public Law No. 97-257, which established the Resettlement Trust Fund for the People of Bikini, to permit resettlement of the Bikini people outside the Marshall Islands until such time as Bikini is deemed safe for resettlement.

E. Health Care

The Burton Health Care Act, Public Law No. 96-205, passed by Congress in 1980, was designed to provide health care for the people of Bikini, Enewetak, Rongelap and Utirik, and for the people of such other atolls as the Secretary of Interior determines were affected by U.S. nuclear testing. The Administration has attempted to implement the Burton Act under Article II, Section 1(a) of the Section 177 agreement by providing $2 million annually "to the Government of the Marshall Islands to include, in its health-care system, health-care programs and services . . . contemplated in . . . Public Law 96-205." This provision reads well on its face, but the position of the Marshalls Government, which has not changed over the years, is that all the Marshallese people were affected by the U.S. nuclear testing program, so that all of them should benefit under P.L. 96-205. This means, in effect, that the Section 177 agreement does not require the Marshall Islands Government to spend one nickel to provide the special medical treatment envisioned for the Bikini people and the other three population groups spelled out in P.L. 96-205.

The House Interior Subcommittee on Public Lands and National Parks held extensive hearings on the Burton Act last October 25 and February 7, and the full Committee has recommended that the $4 million appropriated last year be combined with an additional $7 million appropriation in fiscal year 1985 to create a U.S.-based four-atoll health care trust fund.

The Interior Department has recently taken an important step in implementing the Burton Act by recommending that the U.S. Government should contract with a qualified public or private organization, not the Government of the Marshall Islands, to manage and implement the Burton Act. Indeed, the Interior Department has developed what appears to be an excellent blueprint for implementing the legislation. The only serious flaw in the Department's plan is that it does not recommend the establishment of a trust fund to manage the program in perpetuity. Rather, the Department estimates that the program will cost approximately $3.6 million over four years, at which point the Department of the Interior could seek further appropriations.

The Bikini people agree with the trust fund approach, and they urge that it should be linked legislatively with the passage of the Compact. Accounting practices in the Marshall Islands simply do not meet rigid U.S. standards; a U.S. trust, however, would be subject to stricter laws, and the Interior Department could require annual accountings and audits. Second, a single appropriation now will place a final price tag on what many would otherwise view as an ongoing commitment of the U.S. Government. Lastly, a private sector, nonpolitical health care provider and trustee will be more likely to implement the legislative intent of the Burton Act than the Marshall Islands Government, which maintains that the Act applies to all Marshallese citizens. At a minimum, however, I recommend, as with a cleanup of Bikini, that S.J. Res. 286 be amended to provide for a continuing Congressional authorization for continuation of the Burton Act beyond the effective date of the Compact, thus permitting the Congress, should it desire, to create a health care trust fund to implement this legislation.

A brief word about trust funds. They are, in my opinion, the best solutions to many of the appropriations needs of the Bikini people. The Resettlement Trust Fund for the People of Bikini, established in late 1982, earned an excellent rate of return in its first year, and the Bikinians themselves are directing the expenditure of its income to hire English teachers, to provide scholarships to Bikinian students in the United States, and to purchase generators, photovoltaic equipment, health insurance, airstrip maintenance equipment, and the like. Moreover, the Trustee must provide an annual accounting to the Interior Department.

This trust fund works. It has permitted the Bikinians to set their own priorities, and it has encouraged a greater degree of self-reliance within the community. Indeed, the Presidential Commission on Indian Reservation Economies, established by President Reagan in 1983, has reviewed the Bikini Resettlement Trust Fund as one of several possible models to help achieve the laudable goals of getting the U.S. Government out of the day-to-day management of Indian trusts and encouraging greater self-reliance as well as private sector development and growth of reservation economies. The trust fund concept is the best way to implement both the cleanup of Bikini and the Burton Health Care Act, and this approach is in keeping with this Administration's "private sector" philosophy.

F. Food

The Bikinians have been receiving U.S.D.A. food for almost fifteen years, since Kili, which is about one-ninth the size of Bikini, cannot support the food needs of the people living there. The Compact provides no food support for the people of Bikini in the post-Trusteeship period. Although Administration officials have previously assured Congress and the United Nations that the Bikinians' food needs will be met in the post-Trusteeship period, this is not necessarily the case. Under Article II, Section 1(d) of the Section 177 agreement, two prerequisites must be met before the Bikini people will continue to receive U.S.D.A. food. First, the Government of the Marshall Islands must request such assistance from the U.S. Government. Second, if such a request is made, the U.S. Government will continue the feeding program "on a reimbursable basis" from the Government of the Marshall Islands. Rather than leave this matter to the discretion of the Marshall Islands Government, the Bikinians urge you to amend S.J. Res. 286 to provide for a continuing Congressional authorization to continue U.S.D.A. and supplemental food for the people of Bikini.

G. Other Issues

The following is a list of questions and proposals on specific parts of the Section 177 agreement as to which I urge this Committee to seek written clarification from the Administration in order to create a clear legislative history:

1. Compensation determinations. At no point has the Administration explained how it arrived at the sum of $150 million to handle the Section 177 issues or how it determined who should get what part of the $18 million in annual proceeds earned by the fund. The Bikinians are to receive about 28% of these annual proceeds, which have a present value of around $30 million, yet at one point in these negotiations they were to have received 49% of the "pie" offered by the United States. I therefore urge this Committee to consider recommending that the full Bikini allotment of $75 million be appropriated at the time the Compact becomes effective. I also urge you to ask the Administration to explain the logic behind these numbers and percentages, as the Bikinians believe that the compensation offered is inadequate.

2. Claims Tribunal. I urge you to ask the Administration if, in its view, the Claims Tribunal has the power to prevent the Fund Manager from distributing annual proceeds to the people of Bikini or the other three atolls if one individual brings an action before the Tribunal claiming to be a member of one of these population groups. If so, some provision should be considered to prevent this from occurring.

Article II, Section 3 provides that the Bikinians' annual proceeds are to cover "loss or damage to property and person of the people of Bikini." Is it the view of the Marshalls and U.S. Governments that this compensation covers all the Bikinians' claims, or could an individual Bikinian, let us say the owner of one of the islands vaporized by Bravo or the family of a child who lived on Bikini in the 1970's and recently died of cancer, bring an action before the Claims Tribunal for additional compensation?

Lastly, Article V, Section 1(d) states that the members of the Claims Tribunal shall "be appointed pursuant to procedures adopted by the Government of the Marshall Islands in accordance with its constitutional processes." What are these procedures and what specific constitutional provisions are covered?

3. Continuation of U.S. public laws. There are numerous U.S. public laws that relate to Bikini and which should continue beyond termination of the Trusteeship. These are mentioned in Appendix A to the Section 177 agreement, but there is no reference to their ongoing applicability. What is the view of the U.S. Government as to the continuing applicability of these laws, especially in light of Section 171 of the Compact?

4. Annual proceeds to Marshalls Government. Article II, Section 7(d) provides that annual proceeds not awarded by the Claims Tribunal may "be used by the Government of the Marshall Islands for other programs and services for the people of the

Marshall Islands as their unique needs and circumstances resulting from the Nuclear Testing Program may require . . . ." If the $150 million fund continues to earn 12% annually, as much as $18 million will become available annually for distribution beginning in the sixteenth year of the Compact. Since the Marshalls Government takes the position that all Marshallese people were affected by the nuclear testing program, doesn't the above language justify the Government's use of these Section 177 funds for all general governmental purposes? Does it make sense to continue the $150 million fund beyond fifteen years this way or should the corpus be distributed to the beneficiaries, in trust or otherwise, in the pro rata amounts set forth in Article II, Sections 1-5?

5. Amendment. Article XIII, Section 4 provides that the agreement can be amended at any time by mutual consent of the two governments. Could this be done without Congressional approval?

6. Oversight. Congress should pass legislation designating a specific Congressional committee and executive branch agency to oversee the Compact, so that Marshallese citizens can appeal directly to those branches of the U.S. Government in case problems develop under the Section 177 agreement.

* * *

Nine years ago this month, Representative Phillip Burton stood on the House floor to ask for passage of the first

Congressional legislation -- a small *ex gratia* trust fund -- to assist the Bikini people. "Truly, they are, to use a contemporary word, refugees," said Mr. Burton; they "have been exiles from their most precious possession, their land."[42] Three years later, when the Interior Department announced the people would have to be moved off Bikini again, he spoke out again on the floor. "Their dream of returning to Bikini has been dashed," he said, and he brought an article to the attention of his colleagues, which asked: "Does America's conscience twinge just a bit as the terrible saga of the poor, naive Bikinians unfolds? After all, the islanders never harmed anyone." Mr. Burton wanted to help resolve "the terrible plight of these Bikini people,"[43] and he would be helping if he were still alive today. In his memory, I ask you to see that justice is done for the people of Bikini.

Thank you.

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[42] 121 Cong. Rec. H12988 (daily ed. May 5, 1975).

[43] 124 Cong. Rec. H5737-38 (daily ed. June 16, 1978).

Senator **Matsunaga**. Thank you very much. Senator Balos, and I thank you for your comprehensive report. And, of course, you have a statement presented through our counsel, Senator, and I think it puts forth in detail what needs to be done to do justice to the people of Bikini. And you can rest assured that this committee will take into full consideration the suggestions which have been made.

Mr. **Weisgall**. Thank you, Senator.

Senator **Balos**. Thank you.

Senator **Matsunaga**. I wish we had time to go into questions and answers, but I'm already overdue at another function.

We will then go to our next witness, Mr. David R. Anderson, counsel for the council and the people of Enewetak, of Wilmer, Cutler & Pickering.

Mr. Anderson, we will be happy to hear from you. You don't have anyone from the council here with you?

Mr. **Anderson**. No. We're down to that part of the day when we face you one on one here.

Senator **Matsunaga**. OK. Here we go. Thank you.

STATEMENT OF DAVID R. ANDERSON, COUNSEL, ON BEHALF OF THE COUNCIL AND THE PEOPLE OF ENEWETAK

Mr. **Anderson**. Good afternoon, Mr. Chairman.

I appreciate the opportunity to appear here this afternoon on behalf of the council and people of Enewetak who bring you their greetings.

May I ask that my prepared statement be made part of the record.

Senator **Matsunaga**. Without objection.

Mr. **Anderson**. Thank you, Mr. Chairman.

I'm here this afternoon to talk about the Section 177 Agreement to the Compact and the concerns that the people of Enewetak have with it.

In summary, it's our view that the section 177 agreement does not adequately provide either compensation for the nuclear injuries sustained by the atoll and the people of the Atoll of Enewetak, nor does it adequately provide for the continuation of programs that the United States has put in place—or endeavored to put in place as part of the cleanup and resettlement of Enewetak.

I think in the time I have this afternoon, I would like to address one or two points that I think need, at least our point of view set forth before this hearing concludes.

During the break, I took a little walk and realized—or was reminded that the Supreme Court is just one door down. The section 177 agreement purports to close the doors of the Supreme Court to the people of Enewetak and the doors of all the other U.S. courts that might hear their lawsuits growing out of the nuclear testing that was conducted on Enewetak.

At the moment, there is pending in the Court of Claims a lawsuit which seeks $500 million in damages from the United States growing out of the testing.

The settlement which is contained in the section 177 agreement purports to settle all those claims for a figure that's listed as $48¾ million.

In fact, as we see it, that figure is more like $5 million, or 1-cent on the dollar on the claim that we have filed in the Court of Claims.

Let me tell you how I get there. The award in the section 177 agreement for the people of Enewetak is to be paid over 15 years in quarterly installments. The present value of that award, according to the Riggs Bank here in town, is about $25 million. That $25 million is essentially all that's contained in the compact for Enewetak.

In order to get that $25 million, however, we have to give up some very valuable things—at least, those very valuable things are not provided in the compact and nowhere else in U.S. law at the moment.

The most important of those is the trust fund which the Administration has previously proposed to establish for the resettlement of Enjibe. When initially proposed, the amount of that trust fund was $8½ million. This year, the House Interior Committee has recommended that it be increased to $10 million in order to build the village, the community facilities and the homes on Enjibe which are needed to resettle that part of Enewetak.

We were delighted this afternoon when the President of the Marshall Islands lent his support to that of the people of Enewetak to the people within the administration who support the return to Enjibe and others who are for that.

But as matters now stand, the $10 million required for that program is not in the compact and, unless it's otherwise funded, the United States will have no obligation to follow through once the compact is signed.

When we came back to Enewetak there were no natural foods available. All of the trees, other vegetation were stripped off as part of the cleanup. They have been replanted, but it will be some time before the new plantings bear fruit and the people can return to their natural diet.

In the meantime, the people there are fed under two U.S. programs which cost on the order of $700,000 a year.

During the negotiations, the United States at one time, put a price tag of $7.2 million on those programs. That sum is no longer in the compact.

You have heard a good deal today about health care and the Burton Health Care Program. Just quickly—as proposals now pending before Congress would indicate, it will take about $11 million to fund that program for the four affected atolls for the next—well, for the foreseeable future. Enewetak's share of that is, roughly speaking, $3 million.

Now, there is a proposal in the compact for health care. It's not clear to me that it would cover Enewetak in the same sense that the Burton Health Care Program would.

Taking this view of the matter than, there are these three items which have a total value of about $20 million which the United States will be relieved of obligations from if the compact is passed in its present form. So in order to get $25 million we're giving up $20 million; net gain, $5 million. That, it seems to us, is not even paying serious attention to these claims.

Ambassador Zeder, in testimony to the Foreign Relations Committee of this body, said the settlement is entirely satisfactory with the United States. Well, why wouldn't it be? Paying that very small sum to discharge these very large obligations would be entirely satisfactory.

Well, it's not entirely satisfactory to the people of Enewetak, nor is it satisfactory that there is, under the compact—not a judge anywhere in the United States who would be empowered to look at this agreement and see whether or not it's fair.

The reason we're here today and the reason so much depends on your consideration of the adequacy of this agreement is that you and the corresponding House committee are the only places in the process where we will have an opportunity to have an objective third party take a look at this agreement and see whether or not by some objective test it's fair. I submit that by any objective test it isn't fair.

I don't quite know what the best way to demonstrate that is, but assume for a moment that you were arrested and falsely convicted of a crime and put in jail and left to languish there for 33 years, and then it was discovered that the Government's evidence was bad and they shouldn't have done it and they let you out and you're entitled to something.

Well, this happened to a person in New York State for 24 years, and they said he was entitled to $1 million.

The 4 or 500 people of Enewetak who were, in effect, falsely imprisoned on their small, remote atoll of Ujelang for 33 years, if they were each given $1 million would have far more coming to them than you see under this agreement.

That may not be the only standard or necessarily the right standard to apply in this case, but it certainly indicates that the $5 million the United States is willing to shell out in this case comes far under any reasonable mark for settling these claims.

So the most important thing that we seek from your committee is very careful attention to the adequacy of the Section 177 Nuclear Claims Award.

We also ask you to bear in mind that the statement made this morning by Ambassador Zeder that settlement of these claims in this way is necessary to the national security of the United States is open to very serious question.

There is, as far as I know, no likelihood that relationships between the United States and the Republic of the Marshall Islands would be damaged in any significant ongoing way if these claims were considered separately from the compact of free association, measured on their merits in a court or other objective forum. And for our Government to tell you, with a straight face, that unless this particular agreement is signed as is, it will be damaging to the relationships between the United States and the Marshall Islands is, I suggest, hokum. It is not something that you need to take seriously, in my judgment.

So then, we have basically these two or three concerns to put before you: We need at least one objective look-see at this agreement to see if it meets basic United States 'standards of fairness and justice; we need some attention paid to the transition problems that have been discussed here by many people; and, we need to know that you are not taken in by the assertions made that unless this agreement is passed as is, the relationships between the

United States and the Marshall Islands will somehow be irreparably damaged.

Mr. Chairman, thank you very much on behalf of the people of Enewetak.

[The prepared statement of Mr. Anderson follows:]

UNITED STATES SENATE

COMMITTEE ON ENERGY AND NATURAL RESOURCES
STATEMENT ON BEHALF OF THE COUNCIL AND PEOPLE OF ENEWETAK ATOLL

May 24, 1984

Presented by David R. Anderson, Esq.

Chairman McClure and Members of the Committee:

The Council and people of Enewetak asked me to appear on their behalf today to present their views to the Committee on the agreement implementing Section 177 of the Compact of Free Association.

Enewetak Atoll, which lies just above the equator in the northernmost part of the Marshall Islands' chain, is roughly midway between Honolulu and Papua, New Guinea. Because of its remote location and small population, President Truman selected it as one of two sites at which to conduct atmospheric nuclear bomb testing once it became politically untenable to continue such tests in Utah and Nevada and other mainland United States' locations. The other site is the atoll of Bikini about which you are also concerned in these hearings.

Between April 1948 and August 1958, the U.S. conducted 43 atomic and thermonuclear (hydrogen) bomb tests on and around the island of Engebi in the northern part of Enewetak Atoll and on Runit, on the eastern edge of Enewetak lagoon. The testing program is described in some detail in the Appendix to my testimony.

As a result of the nuclear testing program, five islands in the atoll were completely or partially vaporized. The remaining islands in the northern part of the atoll, including the major residential island of Engebi, were heavily contaminated with radioactive activity as was the island of Runit. Radioactive and nonradioactive debris littered many of the islands. The atoll's lagoon and coral reef were damaged. Many of the islands were completely stripped of vegetation and nearly all plants of agricultural and economic value on the atoll were totally destroyed during the testing or in the subsequent cleanup.

To clear the way for the testing, the U.S. deported the people of Enewetak to the abandoned atoll of Ujelang, some 125 miles to the southwest. Ujelang has approximately one-fourth of the land area of Enewetak and a lagoon only one-sixteenth as large. The people of Enewetak were de facto prisoners on Ujelang from December 1947 until April 1980 when they were permitted to return to Enewetak. As the first Appendix to my remarks makes clear, the United States was grossly negligent, if not criminally negligent, in its efforts to care for the Enewetak people during the deportation. As a result of the failures of the U.S. effort to take adequate care of its wards on Ujelang, the people there suffered from famine, pestilence, disease and lack of educational and cultural sustenance.

Nuclear testing on Enewetak ended August 18, 1958. Four days later, President Eisenhower announced that the U.S. would discontinue all atomospheric testing; and the Nuclear Testing Ban Treaty, banning atmospheric and underwater testing, entered into force on October 17, 1963. It was not until some 8 1/2 years later, in 1972, that the U.S. announced that it would return Enewetak Atoll to the people of Enewetak. From 1972 until 1977 various federal agencies engaged in studies and planning for the radiological cleanup of Enewetak and its resettlement. The cleanup began in May 1977; and in April, 1980, the people of Enewetak ended their long deportation and returned to Enewetak.

Although the return was a joyous day in the history of these people, there were harbingers of trouble ahead. Not all of the atoll could be resettled. Engebi was off limits then and is still off limits. A huge hyrogen crater on Runit was used as the dumping ground for the radioactive waste collected during the cleanup. As a result of the plutonium deposited there, Runit will be off limits for 250,000 years.

The coral reef is damaged in places and the lagoon bottom is littered with the debris of war and with the cables and other instruments of the testing program.

The plants which, along with the turtles, birds and lagoon fish, provided the food for the Enewetak people, were no more. In their place were seedlings of the coconuts, breadfruits, pandanus and arrowroot planted to replace the vegetation destroyed in the testing or uprooted during the cleanup. With no adequate supply of locally-grown food, the people of Enewetak at once became dependent on imported food. These handouts, delivered five or six times a year by field trip ships, are made up of U.S. Department of Agriculture surplus commodities, supplemented with various items which are purchased by the U.S. and shipped to Enewetak.

In the four years since the program started, the residents of Enewetak have grown accustomed to the free food provided by the U.S. and have become less and less accustomed to working for a living. In the days before the deportation (and during it), these people were simple gatherers. Each of them had to do a day's work for a day's meals. Now the day's meals are free, if not so appetizing, and require no work other than their preparation. With each passing day, the ability of these people to fish, catch birds, and hunt down turtles and coconut crabs diminishes. The enforced idleness, as you might expect, leads to quarrels. Disagreements are growing over the right of the Engebi people to remain on and use the islands in the southern part of the atoll which are owned by the Enewetak people. The friction between the two elements of the community threatens the tranquility of the atoll.

School keeps on Enewetak for students in grades one through eight, but there is no high school. The high school serving Enewetak is located on Majuro, 650 miles away, the Marshall Islands capital. Marshall Islands' law does not require a child to attend school beyond the eighth grade. As a result, many children do not go on to high school. But the chance to attend high school is not available to all who want to attend. Each atoll in the Marshalls is entitled to a certain number of seats in the high school. With the rapidly expanding population of youngsters - the average age of the Enewetak population is said to be fourteen - the proportion of Enewetak's youngsters able to attend high school is diminishing. At present, some of the youngsters who wish to attend high school are unqualified academically and some are prevented by the expense of going back and forth, and/or by the lack of a place to stay in Majuro during the school year.

The airplane fare for adults between Majuro, the principal city in the Marshalls, is $200.00 one way, and is only available every other week. Passage by ship, while much less expensive, is only available every ten weeks or so, and may be a disagreeable trip for those who undertake it.

As a result of hardship, boredom and lack of locally-grown foods, a group of about 100 Enewetak residents recently returned to Ujelang. There, at least, there are some standing coconut trees and other local plants to provide adequate supplies of the traditional diet. Under the leadership of the Senate, a motor sailer, the Wetak II, was built and put in service to permit the people of Enewetak to go back and forth to Ujelang to collect the local foods. This project, like many others, has fallen on hard times. Today, for lack of a local crew, the Wetak II has been at dock as much as it has been in operation. It has made only three trips to Ujelang, an overnight trip, in the ten months or so that it has been in service. At last report, two American expatriates, hired by the Trust Territory of the Parific Islands to operate the vessel, were in Kwajalein awaiting passage to Enewetak.

The atoll lacks even the most rudimentary community facilities. The Department of Interior, in response to a request from Congress, is in the process of preparing a report in connection with the establishment of a comprehensive health care program on Enewetak, Bikini, Rongelap and Utirik as authorized by public law 96-205. In the report, the medical dispensary on Enewetak was described as follows:

> "What was found on Enewetak was a health assistant operating in a room of a larger building which served as a community structure. The structure built by the U.S. military before 1960, was of corrugated steel. The building has not been maintained and the interior was in disrepair, with accoustical tiles falling from the ceiling in some places. They have no running water, power or toilet facilities. Drugs were in shorter supply than in the dispensaries in Utirik and Rongelap and there was less equipment. Both the facility and its contents were seen as wholly inadequate as a health facility."

The foregoing by no means sums up the hostile conditions which the people of Enewetak confront each day of their lives. Apart from some seasonal agricultural labor in conjunction with the planting maintenance program, there is no regular source of employment. There is very little electrical power available. There is no community water supply, no post office, no regular means of communication with the outside world apart from a radio capable of contact with Majuro and Kwajalein. There is no general store, or a place to buy much of anything except perhaps diapers, laundry soap and cigarettes. Gasoline, when it is available, costs $3.50 a gallon.

On September 15, 1982, the people of Enewetak filed a lawsuit in the U.S. Court of Claims seeking $500 million in damages for the injuries caused by the testing program. Islanders on other atolls have filed similar suits. On December 12, 1983, Ambassador Zeder in a report to the Senate Foreign Relations Committee on the status of the negotiations on the Compact of Free Association, made it clear that he thought the Section 177 Agreement is a bargain for the United States.

> "The subsidiary agreement . . . provides about $150 million in payments and programs and, if approved in the Marshalls and funded by the Congress, would also have the effect of mooting about $7 billion in claims against the U.S. and its contractors now pending in the federal courts. The Administration regards signed agreement as entirely satisfactory. . ."

It is no surprise the the U.S. was able to negotiate an agreement which Ambassador Zeder considered "entirely satisfactory." The U.S. held all the highcards in the negotiations on the Section 177 Agreement. As you know, RepMar is not yet a soverign government. It is in every sense of the word a dependency of the United States. Without U.S. aid, RepMar would be bankrupt, a government unable to meet its payroll, or carry on any government program. The Compact of Free Association is its lifeline. Without the financial assistance and federal programs RepMar is to receive over the next 15 years, it could not remain in business. The U.S. would be required, in effect, to foreclose, sending in a trustee in bankruptcy, who would run the country for what it is, an outpost of the United States, maintained for strategic reasons, including the testing of intercontinental ballistic missiles, and not much more.

The government of this small country, seeking to give some effect to the wishes of its people for independence, sought the status offered by the Compact, a kind of halfway house between Trust Territory and soverign nation in which it will have a good deal to say about its internal operations (as long as the U.S. keeps its purse open), but not much to say about its external relationships with the nations of the world. To obtain this token of soverignty, the U.S. required RepMar to espouse the claims of Enewetak and the other northern Marshall Islands. It required RepMar to do so at the cost of obtaining the funds RepMar needs to carry on. This was a nonnegotiable point on the part of the United States.

To its credit, RepMar stated at the outset of the discussions on the Section 177 Agreement, which were held in Majuro in late April and early May 1982, that it would not espouse our claims and that it would not sign the Compact until and unless the people of Enewetak, Bikini, Rongelap and Utirik were satisfied with the provisions for settling the claims arising out of the nuclear testing program. As you know, RepMar was unable, because of the economic pressure under which it labors, to maintain this position.

It signed the Compact in which it agreed to espouse our claims although the provision for dealing with the nuclear legacy is regarded as totally unsatisfactory by each of the affected atolls. The leverage which the U.S. exercised is particularly evident in Article XI, Indemnity, which requires RepMar to indemnify the U.S. up to $150 million for any awards which the U.S. may subsequently have to pay to satisfy judgments in any of the pending lawsuits. In other words, if, as we believe, RepMar is not in a legal position to espouse the claims of the people of Enewetak, at least without their consent, and a court so holds, RepMar and not the United States, will be ultimately responsible for paying the judgment. It is inconceivable that a penniless country would agree to such a provision in arms-length negotiations.

Mr. Chairman, and members of the Committee, it is against this background that we urge you to consider the fairness of the provisions of the Section 177 Agreement affecting Enewetak.

To assess the fairness of the settlement, it is first necessary to consider the United States' current obligations to Enewetak and the provision made in the Section 177 Agreement to discharge those obligations. The most important outstanding obligation is the commitment that the United States has made to provide funds for the resettlement of Engebi, the residence island in the north of the atoll, where the dri-Engebi have their land rights. The Department of Interior, which has considered this matter at length, see Appendix 2, recommended last year that "a tax-free interest bearing trust . . . be established in the amount of $8.5 million to be used for the construction of a community and for the replanting of the island . . ." (Letter dated August 3, 1983 to the Honorable Sidney R. Yates from the Assistant Secretary of Interior for Territorial and International Affairs). This recommendation, which was supported by the Interior Department witness at the House Appropriations Committee Hearing earlier this month, has yet to receive the support of the Office of Management and Budget. Nevertheless, the full House Interior Committee recommends that $10 million be added to this year's appropriation for Enewetak support to fund the resettlement trust fund, and that proposal is pending before the House Appropriations Committee.

We consider it necessary to approach the question as one for which an appropriation is needed since the Section [illegible] Agreement does not provide a fund for the resettlement of Engebi. In short, if the fund is not established as part of this year's Interior Department appropriation, and the Compact is ratified as is, the U.S. will be in a position of welching on the commitment to permit the resettlement of Engebi.

The next most important obligation of the United States is to continue the food supplement program until the replanting program bears fruit. The question as to when the coconuts, breadfruit, pandanus, arrowroot and other local plants will come into production is a matter of dispute between the Trust Territory of the Pacific Islands administration and the people of Enewetak. While there is no dispute that the plantings are not yet producing, there is a dispute as to when they will. Trust Territory of the Pacific Islands predicts that 3,000 of the coconut palms will be bearing in the next 18 months, producing 121,000 nuts. The local people of Enewetak consider that an unrealistically optimistic assumption. To show you why the people are sceptical, I will pass around to the Committee a set of photographs taken last June showing the condition of the coconut plants on Enewetak itself. Enewetak, is, as you know, the major residence island of the people of Enewetak, one of the largest islands in the chain, and one which contains one fifth of the plantings. As the pictures show, the likelihood that these plants will become bearing in the time frame predicted by TTPI is remote. In fact, TTPI, which claims that 1,200 of Enewetak's 6,100 coconut palms will be in full production next year, admits, at another point that "the palms north of the fuel tanks are still in very poor condition. If the old palms growing in the vicinity are any indication of future production potential, the potential is very grim indeed."

Apart from a few healthy stands of coconut palms here and there throughout the islands of the atoll, the planting program is a failure. The breadfruit planting program has come to nothing. According to the most recent TTPI report, only 34 of the 670 breadfruit trees planted survive, i.e. about 5 percent. The pandanus program is not much better: 411 or 1,705 plants survive, i.e, less than 25 percent. From all that appears in the TTPI data, there is no reason to believe that either the breadfruit or the pandanus will establish themselves as a sigificant source of food for Enewetak in the forseeable future.

To make up for the deficiencies in the planting program, the current Enewetak support budget includes $500,000 a year for the atoll's supplemental food program. There is another $200,000 for the maintenance planting program. Unless something is done, these sums will be discontinued once the Compact becomes effective. At one point, during the course of the negotiations, the U.S. proposed to establish a fund of $7.2 million, the income of which would be used to continue these two programs for the first ten years after the Compact became effective then assumed to be in 1984.

That fact makes two points which are relevant to this discussion. The first is that the United States then thought it prudent to provide for the continuation of the existing programs for ten years, not the eighteen months TTPI is now claiming is all that it will take for the planting program to replace the food supplement program. The second point is that the value of these programs to the people of Enewetak, on the basis of the negotiations, is $7.2 million. That means that the United States, is, in effect, withdrawing support valued at $7.2 million in connection with the Compact.

Next to the food programs, health care is the most important program the U.S. is obligated to provide to Enewetak. As you know, Congress last year appropriated $4 million to implement the Burton Health Care Program for the four northern Marshall atolls. As of this date, the program has not been implemented. The people of Enewetak have yet to see their first bottle of iodine from the program or their first doctor visit. Although the Interior Department is in the process of completing a study preliminary to implementing the health care program; the study, itself, is no substitute for a functioning dispensary, off-island health care, and the other medical needs facing Enewetak.

Partly as a result of the inability of the Administration to implement this program, and partly because of concern that if the U.S. is unable to provide the program, RepMar will not be able to either, Enewetak joined with Bikini this year in asking that last year's appropriation of $4 million and an additional appropriation of $7.4 million we are seeking this year, be combined to establish a trust fund which would be administered privately to provide ongoing health care services for the four northern Marshall atolls.

If, as estimate, it will cost approximately $11.5 million to fund the program, Enewetak's share of that amount is approximately $3 million. Since there is no provision in the Compact for paying this amount into the trust fund, one consequence of adoption of the Compact as it stands will be to deprive Enewetak of the value of the health care program. In that event, the Council of Enewetak would be required to provide health care out of other funds.

The combined value of the Engebi resettlement trust ($10 million), the continuation of the food program and the planting maintenance program ($7.2 million), and the Burton Health Care Program ($3 million) comes to approximately $20 million. In our view, these amounts represent ongoing obligations of the United States, obligations which exist apart from the Compact and which, but for the Compact, the United States would be obligated to fulfill. Yet none of these obligations are discharged by the Compact. As a price of independence under the Compact, the people of Enewetak will be required to give up some $20 million in U.S. programs and support.

What do they get in return? Article II, Section 3 of the Section 177 Agreement provides that the people of Enewetak will be paid $48.75 million in quarterly installments of $812,000 over the 15-year period beginning three months after the Compact becomes effective. Although that may seem like a lot of money, its present value, i.e. the amount the Riggs Bank will lend Enewetak on the strength of the commitment, is only $25 million.

In other words, Enewetak is giving up $20 million in existing U.S. obligations to get $25 million to compensate the members of the community for the injuries sustained as a result of the nuclear testing program. This ia a net gain of $5 million, a sum that is far less than anyone ever proposed during the Section 177 negotiations that Enewetak should receive to settle its claims. Now you understand why Ambassador Zeder is on good ground when he said the settlement is one which the United States considers "as entirely satisfactory." Moreover, when viewed this way, it means the United States would be settling the Enewetak lawsuit for 1¢ on the dollar, a bargain no matter how you look at it.

From this analysis, it is clear that the U.S. does not take seriously its obligation to make good to the people of Enewetak for the enormous devastation it wrought on Enewetak or for the egregious injuries it visited on this small community in the name of the U.S. nuclear bomb testing program.

For your consideration, we put before you the following proposal to discharge the U.S. obligation to Enewetak. First, we ask that the United States put in place, through the instrument of trust funds, $10 million for the resettlement of Engebi, $7.2 million to continue the food supplement and planting maintenance programs until they reach the desired objectives, and the necessary funds to implement the Burton Health Care Program. Second, we ask that a fund of $10 million be established for economic assistance or development. At present there is no basis for commercial agriculture or other form of gainful employjent on Enewetak. One possibility is the development of a fisheries business, including a plant and a freezer for processing and storing fish until it could be shipped to market. No matter what type of development is selected, the installation of wind mills and solar systems for power are needed to improve the economy of Enewetak and the opportunities of the people there to lead more useful lives.

We also ask that a $2 million trust fund be established for educational assistance. As you know, it is difficult for Enewetal children to attend high school. Part of the fund would be used for travel back and forth to the high school in Majuro, and to defray the expenses of the Enewetak students during their residence in Majuro. The money would also be used to upgrade the modest class rooms in Enewetak, to provide college scholarships, and to provide vocational training. There is, for example, no trained government clerk on the island. One of the needs the community has is that of a small municipal office and clerk so that it can handle the administration of such matters as the comings and goings of Wetak II, entitlement to health care benefits, the distribution of funds under the settlement agreement, reports to your Committee and to the other committees on Congress, and the like. If there were training available to a member of the community, it might well be possible to employ such a clerk and meet this need.

In addition to the sums of money it seeks, Enewetak asks that there be established, as part of the Compact process, an office in the U.S. Government which will be responsible for oversight of Compact administration. The people of Enewetak want the ability to be able to apply directly to the United States should it be discovered that programs intended for its benefit are not being delivered or administered as intended under the terms of the Compact.

Through all the years since the United States' invasion of Enewetak as part of the war in the Pacific in World War II, Enewetak has dealt directly with representatives of the Government of the United States for its needs. As the Government of the Marshall Islands comes into place, this connection to the U.S. will become attenuated and presumably ultimately be replaced by our local government. While that may seem desirable as a matter of theory, in practice it may lead to hardships which we can only guess at, but not predict with certainty. In order to avoid that result and to provide a safeguard should something go wrong, we ask that an office be established that is accountable to your Committee and the comparable committees of the House. We would like an oversight function established which would permit us to testify each year before Congress as to the status of Compact administration and any problems we have with it.

Finally, there is the matter of nuclear compensation itself. The amount provided in the Compact is $48.75 million over 15 years, an amount which has a present value on the order of $25 million. The community finds that sum totally inadequate. If the programs I have referred to above are funded at the levels I suggested, the people of Enewetak have authorized me to state that they would consider the sum of $48.75 million, the amount determined by the Compact negotiators to be reasonable for the settlement of Enewetak's claims, adequate if it is paid in a lump sum within six months of the effective date of the Compact.

It is not our view that there has been an objective assessment of the damages sustained by the Enewetal people, and that the objective assessment leads inexorably to a figure of $48.75 million. On the contrary, it is our view that neither government involved was interested in making an objective assessment of the damages Enewetak suffered. The amount contained in the Compact reflects only the relative bargaining power, or lack of bargaining power of the affected atolls and of RepMar in its one-sided negotiations with the

United States.

We think the value the U.S. obtained from the use of the atoll for a nuclear bomb testing site, and the value of the suffering sustained by this small community in the 37 years since the testing started, would, if these events had taken place on American soil against American citizens, yield damage jdugments far in excess of the $48.75 million we are seeking here. Thus we view the sum we seek as striking a reasonable balance. It is more than the U.S. negotiations offered, but much less than we seek in the law suit. We also ask that you find a means to pay the award in a lump sum rather than in the quarterly payment fashion provided in the Agreement. The result will be to approximately double the award for nuclear claims. And by funding the other obligations of the United States separately, the overall effect will be to considerably enhance the value of the award to the people of Enewetak.

The figure in the Compact is arbitrary. Moreover, the way which it was reached was arbitrary, and the treatment accorded RepMar and the representatives of Enewetak, Bikini, Rongelap and Utirik by the U.S. was arbitrary. The proposal we are making here today will go a long way toward overturning the consequences of that arbitrariness and arriving at a settlement which Enewetak, as well as the United States, may consider "as entirely satisfactory."

* * *

APPENDIX I

Background of Enewetak's Claims Arising Out of the U.S. Nuclear Testing Program

Conditions on Ujelang

Ujelang Atoll is the westernmost and most geographically isolated of the inhabited atolls and island comprising the Marshall Islands. It lies 124 miles southwest of Enewetak Atoll and 617 miles west of Majuro, the administrative center and the major commerical port for the Marshall Islands. Ujelang Atoll has 0.67 square miles of dry land area and 25.47 square miles of lagoon surface area, much less than Enewetak Atoll's 2.75 square miles of dry land area and 388 square miles of lagoon surface area. Ujelang Island, the largest of the atoll's islands, is rocky and unproductive as compared with the principal islands of Enewetak Atoll.

Ujelang Atoll was uninhabited at the time the Enewetak people moved there, and no one had been living there for several years. Useless brush had grown up everywhere and there were no breadfruit trees.

During the period just before and shortly after the Enewetak people moved to Ujelang, United States Navy personnel constructed temporary housing, rain catchments, and several other buildings there. All United States personnel left Ujelang shortly thereafter, leaving some food supplies, but also leaving the Enewetak people completely isolated from the rest of the world except through infrequent and irregular visits by Trust Territory field trip ships.

Ujelang's resources were inadequate to supply the Enewetak people with a regular supply of food and other material necessities. This lack of resources, combined with the infrequent and irregular ship visits, resulted in periods of extreme hunger and material deprivation. The inadequacy of export resources and the lack of incentive to produce trade goods caused by the infrequent and uncertain ship visits resulted in severe shortages of imported rice, flour, and materials for repair of buildings and boats.

By 1952, most of the Enewetak people's sailing canoes were rendered unusable by a severe shortage of sailcloth, paint, fishing net material, and hooks. In response to the Enewetak people's repeated requests for these materials, a special field trip ship arrived in December 1952, but brought only enough sailcloth for two canoes, paint that was unsuitable for the canoes, and little else of use.

Production of copra -- the chief crop -- gradually diminished during the period on Ujelang. The inadequacy of Ujelang's resources and the infrequency and unreliability of field trip ship visits created food shortages that induced the people to eat the coconuts instead of making copra to sell.

In the mid-1960's, there was a great increase in the island's rat population, which fed off and destroyed the stored copra and the supplies of imported rice and flour. The proliferating rat population became a menace to the children and adults on Ujelang, who had to sleep in wooden boxes for protection.

By 1967, food was so short that the people on Ujelang had only enough for one meal each day. The housing supply was greatly deteriorated because of the lack of materials for maintenance and repair, and several buildings had been destroyed by typhoon.

On October 20, 1967, a Trust Territory ship arrived to find the people on Ujelang with no copra to sell and no money to buy needed food and supplies. Almost all of the nearly 300 people of the atoll boarded the ship and demanded transport to Majuro to protest to the government that they were starving. A Trust Territory official, after seven hours of efforts to persuade the people to leave the ship, radioed for food and agreed to stay on Ujelang until the supply ship returned. The supply ship returned with food on November 3, 1967.

In December 1967, the High Commissioner of the Trust Territory began a small-scale relief effort for the Enewetak people, but by November 1968, the people on Ujelang were totally out of rice, flour, sugar, and other imported goods. Ten deaths resulted from very serious measles and chicken pox epidemics in 1968.

In June 1972, a typhoon destroyed the breadfruit crop on Ujelang. On August 30, 1972, a supply ship found that the Enewetak people had been out of rice, flour, sugar, and canned meat for over two weeks.

The specific instances of deprivation described in the previous paragraphs are only illustrative. Deprivation of these and other types were repeatedly suffered by the people of Enewetak during the time they were on Ujelang.

Enewetak Proving Grounds

Between April 1948 and August 1958, Enewetak Atoll was the site of 43 atomic and thermonuclear (hydrogen) bomb tests. The tests began with Operation SANDSTONE, in April and May 1948, a series of three atomic weapons blasts ranging in strength from 18 to 49 kilotons. Operation GREENHOUSE, held in April and May 1951, included four atomic tests. In November 1952, the atoll was the site for Operation IVY, which included the world's first thermonuclear explosion, estimated at 10.4 megatons (750 times greater than the Hiroshima bomb), as well as a "high yield" 500 kiloton atomic bomb explosion. In Operation REDWING, held from May through July 1956, 12 atomic and hydrogen bomb tests were conducted. In Operation HARDTACK, held from May through August 1958, 22 thermonuclear devices were exploded.

The tests described above were detonated in the air, on towers, on the surface of islands and reefs, on barges, and underwater. Some of the "ground zeros," or surface level explosions, were on the islands themselves, some were on the reef, some were in the lagoon, and one was in the ocean nearby. In addition, two plutonium experiments did not fully detonate but instead sprayed chunks of plutonium across the island.

Nuclear testing on Enewetak ended with the last Operation HARDTACK test on August 18, 1958. On August 22, 1958, President Eisenhower announced a suspension of further atmospheric testing, to take effect October 31. The Nuclear Test Ban Treaty, which banned atmospheric and underwater testing, entered into force on October 17, 1963.

Through much of the 1960's, after the prohibition of atmospheric and underwater testing, the atoll's lagoon was used as a "catcher's mitt" target for test missiles fired from Vandenberg Air Force Base in California.

In September 1971, the United States Defense Nuclear Agency and the Air Force developed plans for an operation known as the Pacific Cratering Experiments (PACE) on Enewetak Atoll, a program designed to test the "cratering" effect of nuclear blasts by simulating such blasts with high explosives. Between September 1971 and October 1973, the United States conducted preparations for PACE, including stripping vegetation and topsoils from one of the islands. In October 1972, the U.S. District Court for the District of Hawaii granted a preliminary injunction to the people of Enewetak under the National Environmental Policy Act prohibiting further work on PACE until adequate environmental impact studies were conducted. People of Enewetak v. Laird, 353 F. Supp. 811 (D. Hawaii 1973). On June 8, 1973, the Air Force terminated plans for the PACE program on Enewetak.

The nuclear testing program and the preparations for PACE inflicted serious damage to Enewetak Atoll. Five islands in the atoll -- Bokombako (sometimes referred to as Elugelab), Louj (sometimes referred to as Lidilbut), Bokaidrik, Boken (including a small unnamed islet to the west of Boken), and Eleleron -- were completely or partially vaporized by the nuclear tests. The remaining islands on the north half of the atoll, where the nuclear testing had actually occurred, including the major residential island of Engebi, were heavily contaminated with radioactivity, as was the island of Runit. Debris and wreckage -- radioactive and nonradioactive -- littered many of the islands. The atoll's lagoon was seriously damaged. Large bomb craters covered many of the islands. The entire atoll was agriculturally devastated: vegetation was completely stripped from many of the islands, and nearly all plants of agricultural and economic value on the atoll were todally destroyed.

Partial Rehabilitation and Resettlement of Enewetak Atoll

On April 18, 1972, Franklin Williams, the United States Special Representative to the Micronesian Political Status Talks, announced that the United States would return Enewetak Atoll to the people of Enewetak by the end of 1973.

In October 1973, the U.S. Atomic Engergy Commission published a radiation survey of the atoll which proposed a plan for a nuclear cleanup operation. From 1972 until 1977, various United States Government agencies engaged in studies and planning for radiological cleanup and rehabilitation programs

From May 1977 to April 1980, the U.S. undertook cleanup efforts. Some members of the Enewetak community participated in the cleanup operation, and for that purpose resided on Enewetak Atoll temporarily and periodically during that period. In April 1980, the Enewetak people as a whole returned to permanent residence on Enewetak Atoll.

Despite the cleanup efforts, the Enewetak people have been able to resettle only the southern portion of the atoll. Several of the northern islands, including the major residential island of Engebi, remain off limits (except for occasional visits) by order of the Department of the Interior.

Notwithstanding the cleanup effort, five islands, which before the testing were productive and economically valuable, have been totally or partially vaporized.

Notwithstanding the cleanup operation, and in part as a result of this operation, Runit Island has been rendered toally unusable. It presently contains more than 110,000 cubic yards of plutonium-contaminated soil and debris that during the cleanup operation were collected from througout the atoll, mixed with cement and water to form a slurry, placed in a bomb crater on Runit, and covered by a concrete dome 18 inches thick and 370 feet in diameter. Runit is expected to be extremely radioactive and dangerous for at least the next 240,000 years.

The cleanup efforst did not repair the damage to the atoll's lagoon.

In connection with the cleanup efforts, extensive amounts of plant material and topsoil that were contaminated with plutonium were removed, doing further long-term damage to the agricultural productivity of the atoll. Plants that were replaced during the cleanup have not yet matured to the food-producing stage; these plants will not yield even minimal amounts of food for several years, and will not yield foods in substantial amounts for at least 8-10 years. Furthermore, agriculture, livestock raising, and certain foraging activities are now limited to the southern islands. As a result of these changes, the people of Enewetak are dependent for their diet upon a supplemental food program conducted by the U.S., and will remain so for several years to come.

Notwithstanding the cleanup effort, public concern about the radioactivity level of food produced on Enewetak Atoll threatens to reduce the ability of the Enewetak people to market their agricultural product, particularly copra, as a cash export crop, even after the plants of the atoll reach food-producing stage.

APPENDIX II

DEPARTMENT OF THE INTERIOR

DOCUMENTS RELATING TO THE ENGEBI RESETTLEMENT TRUST FUND

(Not furnished with all copies
of this statement)

SECRETARIAL ISSUE DOCUMENT *

Resettlement of Enjebi Island

Revised and updated by
Office of Territorial and
International Affairs

November 12, 1982

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*An original SID on Enjebi Resettlement was prepared by the Office of Policy Analysis in March 1980, revised in September, 1980.

DECISION SHEET - RESETTLEMENT OF ENJEBI ISLAND

Option A. The U.S. does not agree to a return to Enjebi Island at this time but makes provision for a future return when it is determined that both one-year and thirty-year protection guidelines can be reasonably met without artificial and untenable restrictions on life style, regardless of trusteeship status.

1. Through legislation, establish a housing trust fund of approximately $8.5 million to be used only when radiation exposure for residents of Enjebi falls below Federal standards; the trust fund would be used to construct a community and replant Enjebi Island. ✓

2. Commit the U.S. to providing the necessary facilities and replanting when resettlement is considered safe by Federal Radiation Standards. ______

Option B. No Action. The U.S. states that the dri-Enjebi people have been returned to their atoll with a standard of living far greater than when they were removed. The U.S. does not agree to a return to Enjebi until protection guidelines are met. ______

Option C. The U.S. actively promotes resettlement as soon as possible. Necessary facilities would be constructed and supplemental food provided. ______

1. The U.S. constructs the necessary facilities and concurrently replants Enjebi Island. A feeding program would be provided until adequate supplies of locally grown food are available. ______

2. The U.S. constructs the necessary facilities but does not provide for replanting Enjebi until consumption of local foods will not result in exposures that would exceed the yearly RPGs. Supplemental food will be provided. ______

Option D. No objection is made by the U.S. to return to Enjebi by the people of Enjebi. The U.S., however, would not provide facilities, would not replant the island, or provide supplementary food, until it has been determined that eating local foods will not result in radiation exposures that exceed RPGs. ______

Other. ______ ______

J. J. Simmons III
Under SECRETARY

April 26, 1983
DATE

EXECUTIVE SUMMARY

SECRETARIAL ISSUE DOCEMENT

RESETTLEMENT OF ENJEBI ISLAND

At issue is the question whether the Secretary should reverse an earlier decision of the Department that an early return to Enjebi Island in the Enewetak Atoll is not in the best interests of the people of Enjebi (the dri-Enjebi). An evaluation judgment must be made as to whether it is safe for the people of Enjebi to return to their traditional residence island at this time.

The U.S. Federal Radiation Protection Guides (RPG) are the radiation exposure guidelines to be used by all Federal agencies. The RPGs can be exceeded but only after careful consideration by the Federal agency concerned that benefits must result from exposure to man-made radiation, and that the probable benefits should outweigh the potential risks of exposure. The people of Enjebi have stated that they are willing to assume risks that may be associated with exposures that exceed the Radiation Protection Guides. They have not, as yet, agreed to hold the U.S. harmless if they return to Enjebi before radiation safety standards are met.

A considerable amount of uncertainty regarding the actual exposure levels and risk factors with respect to a return to Enjebi Island exists. The exposure data are estimates based on projected or anticipated mean exposures. Department of Energy scientists, as well as the independent consultants for the dri-Enjebi, concur that the true values may lie within a range that could be three times greater or less than the estimated level. The actual future exposures only will be determined by the actual diet and the life-style of the people after a return to Enjebi. The 1978 removal of the residents of Bikini Island demonstrated that the predicted diet assumptions and predicted life-style proved not to be accurate. Neither could the rigid restrictions necessary to control exposure levels be maintained.

Both the Department of Energy scientists and the independent consultants agree that the anticipated health effects of the estimated exposure may vary by a factor of two to three.

Earlier opinions of the Department on the Enjebi Resettlement question concluded that a return at the present time is not advisable. The Congress was advised by former Under Secretary James Joseph in November 1979 that the view of the Department at that time was that even one additional illness or death from cancer resulting from an early return would be unacceptable. Following this decision, the people of Enjebi again petitioned the Secretary to reconsider the matter. This request led to the preparation of a Secretarial Issue Document in March, 1980. In May, 1980, the Secretary after reviewing the various documents relating to the resettlement of Enjebi indicated that his preferred alternative was to defer a resettlement until particular safety standards were met. He directed that an environmental assessment of alternatives for resettlement of Enjebi be prepared. This assessment was issued on October 1, 1980. A revised Secretarial Issue Document also was issued on September 25, 1980.

On December 2, 1980, the Secretary decided that the U.S. Government should not agree to resettlement of Enjebi now but should establish a special trust fund to be used for resettlement when radiation exposure levels fall below Federal standards. The establishment of an Enjebi Return Trust Fund would assure the people of Enjebi that a future return to their home island would be carried out even after the United States had relinquished its role as the Administering Authority for the Trust Territory of the Pacific Islands. The Secretary's proposal did not receive OMB approval in the FY 1982 budget proposal.

The people of Enewetak in April 1981 requested Secretary Watt to reverse the December 2, 1980 decision of the former Secretary and to permit a return to Enjebi Island at this time and also to provide funding for a new community there.

On May 25, 1982, an official Enewetak Delegation made the same proposal to the House Interior Appropriations Subcommittee. Chairman Sidney R. Yates has requested the Secretary to review the Enjebi Island return and to inform the Subcommittee of his decision.

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I. Required Decision

A decision is required by the Secretary on the pending request of the dri-Enjebi people of Enewetak Atoll to allow them to return to their traditional island of Enjebi, at this time, and to make provision for the rehabilitation and resettlement of the island.

In April 1980, the people of Enewetak were allowed to return only to the main southern islands of the atoll after a cleanup, rehabilitation and resettlement program had been completed. The atoll had been used by the United States Government for nuclear testing purposes from 1946 to 1958. Forty-three nuclear tests were conducted, all but one being in the northern half of the atoll. The three main southern islands received minimal contamination and are considered completely safe for residence and agricultural purposes. The large northern island of Enjebi, the traditional home of the Enjebi people (known as the dri-Enjebi) was subjected to ten major nuclear tests and was heavily contaminated. U. S. Federal radiation standards cannot be met without very rigid stipulations and an artificial life-style. In 1974, a decision was made that Enjebi Island should not be utilized for resettlement for at least another 35 years.

Temporary arrangements in 1974 were made to build houses and provide land for the people of Enjebi on the clean southern islands which are owned by the residents of the southern islands, known as the dri-Enewetak. No provision was made in the Enewetak Master Resettlement Plan of 1975 for a future return to Enjebi Island by the Enjebi people. The people of Enjebi understand that certain health risks are involved in an immediate return, but they have stated that they are prepared to assume any risks in order to live on their traditional island on which they own the land rights. Currently, the dri-Enjebi are living in the southern half of the atoll as guests of the people of Enewetak and Medren Islands.

The Enewetak people (both the dri-Enjebi and the dri-Enewetak) have petitioned the Secretary to permit a return to Enjebi Island. They request that the Secretary make suitable arrangements for a rehabilitation and resettlement project of Enjebi Island. They have made similar requests to the U.S. Congressional committees that are concerned with affairs of the Trust Territory of the Pacific Islands.

II. Forcing Event

At the May 25, 1982, House Interior Appropriations Subcommittee Hearings on the FY 1983 Budget, an official delegation from

Enewetak, accompanied by Legal Counsel, made an official request to Chairman Sidney R. Yates that he ask the Secretary of the Interior to make a decision on the pending Enjebi Resettlement issue. Chairman Yates in response directed the representatives of the Department of the Interior present at the Hearings to bring the matter to the attention of the Secretary and to report back to the Subcommittee on the decision of the Secretary. The Secretary's response is pending.

Additionally, recent events concerning the political status negotiations for termination of the United Nations Trusteeship Agreement have made the Enjebi Resettlement matter a special issue. On May 30, 1982, the U.S. negotiators and the Government of the Marshall Islands negotiators signed an Agreement on the Implementation of Section 177 of the proposed Compact of Free Association. This Agreement (if approved), in essence, constitutes the full settlement of all claims, past and future, arising out, or in any way related to the nuclear testing program against the U.S. The Agreement, while it provides general compensation to the people of Enewetak as a group for loss of land and other damages, does not make any specific reference to provisions for a future Enjebi Resettlement project. The position of the U.S. negotiators is that any future Enjebi Resettlement program is the responsibility of the Government of the Marshall Islands and the people of Enewetak and funding for any such resettlement would have to come from the funds provided in the Section 177 Agreement. The people of Enewetak and their legal counsel protest this position. The resettlement of the southern islands of Enewetak Atoll did not come out of compensation funds. The people of Enewetak have petitioned the U.S. Congress to make specific provision for an Enjebi Island Resettlement Project, separate and outside of any "Compact" arrangements. They have indicated that they will continue to petition appropriate committees of the U.S. Congress to direct the Secretary of the Interior to resolve the Enjebi Resettlement issue as part of the general Enewetak Resettlement Program which is under the jurisdiction of the Department of the Interior.

III. BACKGROUND

The United States assumed control of Enewetak Atoll during World War II by capturing it in February 1944 from the Japanese forces. The two main islands of the atoll, Enewetak in the south and Enjebi in the north, had been heavily fortified and were taken only after fierce fighting. The Japanese had administered the Marshall Islands after World War I under a League of Nations' mandate. At the conclusion of World War II, the United States was designated as the administering authority under a Trusteeship Agreement with the Security Council of the United Nations. (effective July 18, 1947)

After assuming control of the atoll, the United States developed the large southern island of Enewetak as a major military base. This precluded the people of Enewetak Island from returning to their home. The island of Enjebi, in the northern half of the atoll, had been devastated by the fighting and this prevented the return of the Enjebi people to their island. Following the close of hostilities, the U.S. Navy provided a temporary camp for all of the residents, then numbering 136, on the small island of Aomon in the northern half of the atoll. The Enjebi people, however, pressed for a residential camp of their own and later in 1944 the U.S. Navy moved the Enjebi people to the small northern island of Bijire which was under the jurisdiction of the paramount chief of the Enjebi people. From 1944 to the end of 1947, the people of Enjebi, known as the dri-Enjebi, resided on the island of Bijire and the people of Enewetak, known as the dri-Enewetak, lived on the island of Aomon. From the onset, residence on these two small islands was regarded as temporary until the U.S. could return Enewetak Island to the dri-Enewetak and until the dri-Enjebi could return to Enjebi Island. The two small islands could not support the groups and the U.S. Navy provided a basic food program.

Before any return to the main residential islands, i.e., Enewetak and Enjebi, could occur, the United States in 1947 determined that the entire atoll was required for the testing of various nuclear devices. This necessitated removal of all of the people of the atoll. The only available place for relocation was the small uninhabited atoll of Ujelang some 124 miles southwest of Enewetak Atoll. In December 1947, the people of Enewetak were transferred to Ujelang Atoll where they remained until a return to the southern part of Enewetak Atoll was permitted in April, 1980.

Traditionally, the people of Enewetak Atoll have been divided into two distinct groups, the dri-Enewetak of the southern half of the atoll and the dri-Enjebi of the northern half. Each group holds traditional land rights in its respective section of the atoll and each has its own paramount chief. The Enewetak people have not been under the jurisdiction of other paramount chiefs in the Marshall Islands.

Because of the small size of Ujelang Atoll, the two groups had to share the only sizeable island (Ujelang) as a residential and agricultural area after their relocation to that atoll in 1947. But even on the single island of Ujelang, the separate political and cultural divisions were recognized by dividing the island into two sections with the dri-Enjebi living on one half of the island under their own paramount chief and the dri-Enewetak living on their half under the jurisdiction of their paramount chief. The two groups shared community facilities in the center of the island, i.e., church, a school, dispensary and other community facilities.

During the nuclear testing period, between 1948 and 1958, 43 nuclear tests were carried out in Enewetak Atoll, all but 19 being in the northern half of the atoll. The three main southern islands of the atoll, Enewetak, Medren, and Japtan, became the base camps for a 4,000-man scientific and support task force, with the main base situated on Enewetak Island. Enjebi Island was subjected to ten major nuclear tests; three ground zero tests and seven atmospheric tests. Enjebi also received considerable contamination from fallout from a dozen or more nuclear tests conducted on nearby islands or from atmospheric tests in the vicinity. The result was that Enjebi became the most heavily contaminated of all of the northern islands. The island of Runit on the border of the political division between the southern and northern half of the atoll was the site of 18 nuclear tests and was so heavily contaminated that it has been quarantined indefinitely. It is also the site of the crater where all contaminated debris and soil has been disposed.

After nuclear testing ceased in 1958, the United States continued to use the main southern island of Enewetak for base purposes. The northern islands were off limits due to radiation contamination. It was not until April 1972, that the United States government announced its intention to transfer the administration of Enewetak Atoll to the Trust Territory of the Pacific Islands and to clean up and rehabilitate the atoll for the return of the people of Enewetak. Plans were developed to clean up, rehabilitate and resettle those islands that were determined to be safe for residence and agricultural purposes.

Initial plans for the resettlement of Enewetak Atoll called for a return of each group to its ancestral home after cleanup and rehabilitation of the atoll. The Enewetak Master Plan prepared in 1973 provided for a separate community of Enjebi Island for the dri-Enjebi and communities on Enewetak and Medren in the south for the dri-Enewetak. Results of intensive radiological surveys conducted by the Atomic Energy Commission (AEC) in 1973, in anticipation of the resettlement of Enjebi Island, concluded that individuals living on Enjebi would be exposed to radiation in amounts that would exceed U.S. Federal radiation standards for the general public. This radiation exposure would result from long-lived fission and activation products in the soil transmitted to the residents through the food chain. The people of Enewetak, then living on Ujelang, were notified that Enjebi Island could not be considered for immediate resettlement. After many weeks of deliberation, the dri-Enewetak offered to share their land rights on certain of the southern islands with the dri-Enjebi until such time as Enjebi would be safe for habitation. The proposal to live on land in the southern islands on which they had no traditional land rights was accepted reluctantly by the dri-Enjebi. This decision by the people of Enewetak was communicated to U.S. government officials in late 1974.

The Enewetak Master Plan, accordingly, was extensively revised and reissued on March 13, 1975. The dri-Enjebi would have housing built on the three southern islands, mainly on Medren Island and Japtan Island, with most of the dri-Enewetak having housing on the main island of Enewetak.

Costs of the Enewetak Resettlement and Rehabilitation Project

In 1977, the 95th Congress, as part of the regular Interior FY 1978 budget, appropriated $12.4 million for the Enewetak Rehabilitation and Resettlement Program. This was supplemented in October 1979 with an additional appropriation of $1.475 million. A detailed breakdown of costs by year and by activity is set out in the "Enewetak Atoll Completion Report for Island Rehabilitation and Resettlement" issued in July, 1980 by Holmes & Narver, Inc., which managed the Enewetak Resettlement Project for the High Commissioner of the Trust Territory of the Pacific Islands.[1]

The massive cleanup and rehabilitation program was completed in early 1980. In April 1980, the people of Enewetak returned to the new communities that had been constructed on the three southern islands of Enewetak, Medren, and Japtan. They continue to reside there except for a small rotating group of some 90-100 individuals who continue to use Ujelang Island for varying periods during the year.

Enjebi Island was contaminated very heavily with transuranic elements, i.e., plutonium and americium, which have half lives of up to tens of thousands of years. Unlike the suburanics (cesium and strontium) the transuranics were concentrated in the upper six inches of soil and in specific locations on the island. They are also removable. It was decided, therefore, that the cleanup should concentrate on the removal of these transuranic elements for without removal, Enjebi Island would have to be quarantined for up to 24,000 years. A complicated system of removal of the transuranics (primarily plutonium) was developed, part of which included the removal of up to six inches of top soil over much of Enjebi Island. By 1979, a successful removal of the transuranics had been accomplished.[1] This led to the request by the people of Enewetak, through their legal counsel, for a new radiological survey of the island. There was postulation that the removal of six inches of top soil containing the transuranics possibly may have reduced the suburanic contamination (cesium-137 and strontium-90) levels also. These suburanic elements have half lives of 5 to 30 years. The Department of Energy (DOE) conducted a resurvey of Enjebi Island in the summer of 1979. The resurvey indicated that the cleanup of plutonium and americum had not materially reduced the contamination levels of the suburanics (cesium and strontium). Nonetheless, new dose assessments were calculated using data from the 1979 radiological survey as well as revised assumptions regarding living patterns, particularly diet habits. The revised living patterns presupposed a constant intake of imported foods, a ban on certain local foods, and a much-lower consumption of coconut elements in the local diet. In September 1979, the results of these dose assessments were presented to the dri-Enjebi people by scientists representing the Department of Energy. The dri-Enjebi also received private briefings from independent consultants retained by their legal counsel. In essence, the new analyses indicated that under controlled conditions, levels of radiation slightly exceeding U.S. Federal standards might be achieved.

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[1] The July 1980 Enewetak Completion report is a bulky document of some 152 pages, consisting of 65 pages of narrative, 73 plates (photographs) showing all aspects of the resettlement work, and 14 tables, primarily showing cost estimates. Copies of the report are available in the Office of Territorial and International Affairs and can be supplied on request.

In late 1979, the people of Enjebi submitted a resolution to the U.S. Congress and the Secretary of the Interior stating that while they were fully aware of the risks entailed in a return to Enjebi, they wished to return as soon as possible rather than wait until U.S. Federal radiation standards are expected to be met. The Secretary was petitioned to provide all the necessary financial assistance to enable an early return. In

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[1] The Defense Nuclear Agency was responsible for the cleanup aspects of the Enewetak program and funding was requested from the Congress by the Department of Defense for this purpose. In the FY 1977 military construction appropriation, Congress provided $20 million as a base amount for the cleanup and directed DoD to draw upon other needed resources, without reimbursement, from the Military Services' construction and support forces. It is estimated that this additional support came to approximately $85 million. Because of this non-reimbursable support, it is very difficult to determine costs for the Enjebi soil removal.

November 1979, the Department agreed to consider the request made by the dri-Enjebi and so informed the House Interior Appropriations Subcommittee.

Late in 1979, the Secretary set in motion a complete review of the request for an early return to Enjebi. A Secretarial Issue Document on the resettlement of Enjebi Island was prepared as well as an Environmental Assessment of Alternatives for such a resettlement. Options were presented to the Secretary and on December 2, 1980, the Under Secretary on behalf of the Department, determined that the U.S. should not agree to the resettlement at this time but should provide for a return when the Secretary would determine that both the one-year and thirty-year radiation protection guidelines could be reasonably met, regardless of trusteeship status. The Secretary also recommended that consideration be given to the establishment of a trust fund of approximately 6-10 million dollars to be used only when radiation exposure standards for residents falls below Federal standards. An attempt was made by the Department to procure funds through the appropriation process for the establishment of an Enjebi Housing Trust Fund. The Department submitted such a proposal to the Office of Management and Budget in its initial 1982 budget presentation but it was not approved. The Secretary appealed the OMB decision but the appeal was denied. Accordingly, the option of providing for a housing trust fund for a future return did not materialize in the final 1982 budget presentation to the Congress.

The issue of funding a return to Enjebi again was raised by the legal counsel for the people of Enewetak at the May 13, 1981 House Interior Appropriations hearings before the Subcommittee on Interior and Related Agencies.[1] He cited the unsuccessful attempt of the Department to include an Enjebi Trust Fund in its 1982 budget proposal. He stressed that the Enewetak people preferred the immediate appropriation of funds to permit an early return. No action was taken by the Interior Appropriations Subcommittee on this direct appeal.

During early 1982, the Office of Territorial and International Affairs at Inter-Agency Working Group meetings on nuclear issues relating to Section 177 of the Compact of Free Association pointed out that the Enjebi Resettlement issue was unresolved.

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[1] Department of the Interior and Related Agencies Appropriations for 1982. Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, Ninety Seventh Congress, First Session, Subcommittee on the Department of the Interior and Related Agencies. Part 12, May 13, 1981, (p. 630)

If specific provisions were not made in the subsidiary agreement, direct appeals to Congress by the people of Enewetak could be expected.

At the May 25, 1982 hearings of the House Interior Appropriations Subcommittee on the Trust Territory budget for fiscal year 1983, the legal counsel for the people of Enewetak raised the matter of the return to Enjebi. Negotiations, at that time, were underway with respect to the agreement implementing Section 177 of the Compact, but it did not appear the U.S. negotiating position would provide for specific funding for a return to Enjebi. In light of this, the Enewetak delegation requested assistance of the Subcommittee to resolve the matter. Chairman Sidney Yates requested that the matter be raised with Secretary Watt and that the Secretary inform the Subcommittee of his decision on the issue of an early return to Enjebi and funding arrangements for such a possible return. The Subcommittee is pressing for an expeditious reply on its request.

IV. ISSUES

(1) Federal standards for radiation exposure

The United States has established Federal radiation exposure standards known as Radiation Protection Guides (RPG) and these were used to determine the safety of returning to Enewetak Atoll. The RPGs are stated both as the maximum exposure any single individual should receive in any one year (500 mrem) and as the total exposure over a 30-year period (5,000 mrem). The applicable RPGs are shown on the bottom line of the attached table (Annex 1). These RPGs were developed originally by the Federal Radiation Council and approved by President Eisenhower. They are now under the authority of the Environmental Protection Agency.

The U.S. Federal standards do not differ significantly from analogous international standards for radiation exposure. There is beginning to be increasing opinion in the international scientific world, that for individuals who are exposed year after year to continued radiation, the 500 mrem level should be reduced.

Federal guidelines call for agencies to apply the RPGs with judgment and discretion and to keep exposures as far below these levels as possible. Under certain conditions, agencies may exceed the RPGs but only after careful consideration of the reasons for doing so and of the related recommendations made by the Federal Radiation Council. In particular, the report on which these recommendations are based includes a statement that benefits must result from exposure to man-made radiation, and that the probable benefits should outweigh the potential risks of doing so. Staff at the Department of Energy and the Environmental Protection Agency could recall no instances where a Federal agency has decided to allow exposures for the general public to exceed the RPGs.

(2) Special factors relating to RPGs for the Enewetak Cleanup and Resettlement

Several special factors came into play in 1974 and 1975 with respect to the application of Federal radiation standards to the Enewetak cleanup and resettlement situation. The AEC Task Force on Recommendations for the Cleanup and Rehabilitation of Enewetak Atoll held that exposures should be as low as practicable and based on conservative interpretations of Federal Radiation Council (FRC) guidelines. The AEC Task Force recommended that the values should be reduced by 50% for individual exposure and 20% for gonadal exposures to allow for uncertainties in dose prediction. In short, the criteria recommended one-half of the Federal Radiation Council guidelines for individuals (mrem 250) and 80% of the 30-year guidance (4,000 mrem). These criteria were submitted to the Environmental Protection Agency (EPA) by the AEC on May 2, 1974 for review and comment. On May 17, 1974,[1] EPA endorsed the recommended radiological cleanup and resettlement criteria with the stipulation that the cleanup criteria were to be considered as upper limits and that cleanup levels and population doses should be kept to the minimum practical level.

Equally important was the directive issued in 1975 by the Senate Armed Services Committee when it authorized funds for the Department of Defense cleanup program. On May 22, 1975, the official report[2] of the Senate Armed Services Committee directed that there should be no resettlement on Enewetak unless the cleanup criteria on the lower exposure guidelines recommended by the AEC be met.

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[1] Letter of May 17, 1974 to Dr. Martin Biles, Director, Division of Operational Safety, U.S. Atomic Commission, Washington, D.C. from Dr. W. D. Rowe, Deputy Assistant Administrator for Radiation Programs, Environmental Protection Agency, Washington, D.C.

[2] Senate Armed Forces Committee Report 94-157, May 22, 1975.

(3) Inconsistent position of the Legal Counsel for the Enewetak people on Radiation standards applicable to Enewetak

The position of the legal counsel for the Enewetak people with respect to radiation standards applicable to Enewetak has been inconsistent. In his comments on the EIS, he had argued that there should be no risks involved for the people of Enewetak. In 1974 and 1975, he supported completely the AEC Task Force recommendations for lower levels. In testimony before the House Subcommittee on Military Installations, Committee on Armed Services, hearings on May 7, 1975,[1] he testified that the lower standards recommended by the AEC were "wisely conservative". He noted that Enjebi Island could not be used at the present for permanent residence and he stressed that he did not want any of the Enewetak people to be endangered in any respect in a return to their home islands. As the cleanup program progressed, he began to press for an early return to the island of Enjebi. He argued that the RPGs were not applicable on the grounds that they were developed and promulgated for U.S. citizens, and, therefore, could not be applied to the Marshallese who are not U.S. citizens. He further argued that if any U.S. standard were to be applied it should be the Protective Action Guidelines (PACs). The Protective Action Guidelines are to be used in situations where exposure occurs after the radiation effect. The EPA[2] by letter of August 23, 1979 reiterated to the Department of the Interior that the U.S. Federal standards do apply for Enewetak and that the RPGs are the appropriate standards to be followed.

(4) Dose-Effect Relationship

The dose effects calculated by the Department of Energy were derived on the basis of procedures published originally in 1974 by a National Academy of Sciences (NAS) Committee. Some scientists regard this methodology (a linear relationship between dose and effect) to be too conservative in that it might overstate the biological effects of low level doses.

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[1] Hearings on H.R. 5210 to authorize certain construction at military installations and for other purposes. Before the Subcommittee on Military Installations and Facilities of the Committee on Armed Services, House of Representatives, Ninety Fourth Congress, First Session, May 7, 1975.

[2] Letter of August 23, 1979 from Dr. David M. Rosenbaum, Deputy Assistant Director for Radiation Programs, Environmental Protection Agency, Washington, D.C. to Mrs. Ruth G. Van Cleve, Director, Office of Territorial Affairs, Department of the Interior, Washington, D.C.

The independent consultants retained by the former legal counsel for the people of Enewetak[1] had no argument with the monitoring data of the Department of Energy and with most of the life-style models. They altered the diet assumptions over those used earlier by the Department of Energy in calculating the dose and risk estimates. The new diet assumptions were based on a dietary survey conducted by a Micronesian Legal Services lawyer and a Marshallese school teacher on about 25% of the Enewetak people living on Ujelang using a questionnaire method. The Ujelang diet assumed a much lower level of consumption of coconut and coconut by-products in the diet than earlier diet patterns. Scientists at the Lawrence Livermore National Laboratory who used the revised diet in the final report, "Reassessment of the potential radiological doses for residents resettling Enewetak Atoll" qualified their results by pointing out, that if the average coconut intake were to be assumed to be twice that claimed in the Ujelang diet, the estimated maximum annual dose rate would be about 60% higher. The Ujelang diet is open to challenge. It was, nonetheless, an attempt to set forth diet patterns of a specific group of Marshallese, that of Enewetak people living on Ujelang, and must be given certain credence.

The final results of the independent consultants as to risk elements are quite similar to those calculated by the Department of Energy. The major difference is that the consultants addressed the total (30-year) exposure only, rather than the yearly exposure and total exposure. Their rationale was that this was an appropriate approach since it is the total exposure over a period of time that determines effect. Department of Energy scientists, on the other hand, maintain that the yearly dose must be considered also. They also maintain that the mean dose in the year in which the dose is highest must be multiplied by a factor of three to compare the dose estimate with the public exposure limit of 0.5 rem. This is necessary since there continue to be uncertainties in a number of the parameters employed in deriving the dose estimates. The Lawrence Livermore Laboratory reassessment of the potential radiological doses for resettling Enewetak Atoll showed that approximately 32% of the population would exceed the mean dose, and, in fact, about 5% of the population would be expected to exceed 3 times the main dose. The 1978-79 experience among the Bikinians prior to their evacuation indicated that the greatest body burdens of cesium-137 were about 3 times above the mean body burden level.

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[1] The former legal counsel for the Enewetak people, Mr. Theodore Mitchell, was also Director of the Micronesian Legal Services. He left the Micronesian Legal Services group in early 1982 and no longer serves as the legal counsel for the people of Enewetak. The Micronesian Legal Services still represents the Enewetak people and has a Washington legal representative, Mr. David Anderson, of Wilmer, Cutler and Pickering, who represents the people of Enewetak for political status negotiation matters.

The Department of Energy, thus, holds that both yearly exposures and the 30-year exposure must be considered whereas the independent consultants considered only the 30-year exposure. Both the DOE scientists and the independent consultants stress that actual radiation dose/effects may vary from estimates by at least a factor of two or three. Indications from the 1979 Bikini Island experience is that any variation in dose/effects would appear to be an upward one.

(5) Do the dri-Enjebi understand the implications of their request to return to Enjebi Island?

The people of Enewetak received a briefing in September 1979 on Ujelang Atoll by DOE of the problem, the doses of radiation they would likely receive, and the estimated effects of these doses. The briefing was in Marshallese and was presented in a four-hour open meeting. The results were published also in a bilingual, illustrated booklet, copies of which were supplied to every individual on Ujelang. The Solicitor of the Department of the Interior attended the September 1979 briefing on Ujelang Atoll and praised the quality of the DOE presentation. A closed briefing also was held and a presentation made to the people by their legal counsel and the independent consultants. No reports on the closed briefing were made available. Local residents indicated that there was stress placed on the very small amount of risk, i.e., less than one additional death from cancer over 30 years, by returning to Enjebi now.

Following these two presentations, the Ujelang Council passed a resolution which stated that the dri-Enjebi understood the risks involved but still wished to have a community constructed on Enjebi and the island replanted so they could return. They indicated that they understand the risk implications and are prepared to take them.

(6) United States obligations and liabilities

Under the Trusteeship Agreement, the United States pledged to protect the health and welfare of the residents of the Marshall Islands. The Trusteeship Agreement also required the U.S. to foster political institutions, promote economic self-sufficiency, promote the social advancement of the people, and recognize cultural traditions. These responsibilities will cease with the termination of the Trusteeship.

The question of whether there is potential liability of the United States for any adverse health effects resulting from a return to Enjebi Island prior to the time when exposure would meet the RPGs is not clear. Past actions and positions of the United States, related agreements, the applicability of U.S. law, and the question of whether the dri-Enjebi can assume the risk and release the U.S. of further liability make the potential liability question a difficult one.

U.S. officials in the past, both to the Congress and to the Enewetak people, always have taken the position that the U.S. Government will undertake all necessary measures to provide for the people displaced by Pacific nuclear testing program and would make the atoll habitable again for its original residents.

Range of costs of future liability

If the people of Enjebi were allowed by decision of the United States to resettle on Enjebi Island while radiation is in excess of the RPGs and should radiological damage to health ultimately result from such exposure, some claim for liability on the part of the United States is certain to be made. Cost estimates of possible liability under such circumstances are difficult to predict. At a minimum, some sort of compensation, at least comparable to that provided for the people of Rongelap and Utirik (the 1948 fallout victims) under P.L. 95-134 (Stat. 1159) as amended, would seem probable. P.L. 95-134 makes provision for monetary payments of $25,000 for certain injuries to radiation causes and provision for up to $100,000 for death payment.

Should abnormally high levels of radiation develop, it might well be decided (as was the case for the 1978 evacuation of Bikini Island) that the Enjebi people would have to be removed from the island. This would entail another resettlement project somewhere in the southern islands. The original houses built for the people of Enjebi on Medren Island would have reverted to the dri-Enewetak owners of the land on which the houses had been built. Estimated cost of a new resettlement program under the above conditions is difficult to ascertain since it would be determined by cost levels of a future period. A ten-year period in the future might be used since this was the time frame that prevailed for the Bikini situation that resulted in the 1978 evacuation. Conservative estimates for a resettlement project for Enjebi Island in 1983 dollars would be in the range of $10 million. A possible evacuation in the mid-1990's could well be above a $20 million level.

Since 1980, another dimension has been added. A Compact of Free Association has been signed by the U.S. Government negotiators and the President of the Marshall Islands in October, 1981. Section 177 of the proposed Compact states, in part, that the U.S. accepts the responsibility for compensation owing to the citizens of the Marshalls for loss or damage to property or persons resulting from the U.S. nuclear testing program. On May 30, 1982, a separate agreement between the Government of the United States and the Government of the Marshall Islands for the implementation of Section 177 of the Compact was signed. This agreement relieves the U.S. of responsibility of utilization of areas in the Marshall Islands affected by the nuclear testing program. It sets forth the financial arrangements and other undertakings that the U.S. shall provide in fulfillment of the provisions of Section 177 relating to the nuclear testing program which the U.S. Government conducted in the Northern Marshalls between 1946 and 1958. The Compact and the subsidiary agreement, as yet, have not been approved by the people of the Marshall Islands in a referendum. There would also have to be approval by the U.S. Congress before there can be submittal to the United Nations for termination of the Trusteeship Agreement.

(7) Relation to Bikini Resettlement

There are similarities between the factors that must be considered in determining the Department's response to the dri-Enjebi's request for an early return and to the factors that led to the decision in May 1978 to remove the Bikinians who had taken up residence on Bikini Island and not to allow them to remain elsewhere within the Bikini Atoll. The main residential islands of Bikini Atoll had been declared safe for human habitation in 1968 by President Lyndon Johnson acting on recommendations made by the Atomic Energy Commission. In 1969, a cleanup program was carried out and a resettlement project developed. At that time, it was decided to accomplish the resettlement project in stages since it would take eight years for crops to come into bearing. The return of the entire group of Bikinians was not anticipated until the islands had become agriculturally self-sufficient. Between 1970 and 1978, some 145 Bikinians had returned largely on their own. Originally the group was made up of Bikinian workers involved with the resettlement program and family members gradually joined the group. This small community lived primarily on imported food provided by the Trust Territory Government.

Regular monitoring of the individuals was carried out with special attention being given after 1976 when locally grown foods began to assume importance in the diet. Breadfruit and pandamus had to be banned from the diet. It was not until late

1977 and early 1978 that sizeable amounts of coconuts became available. They also had to be banned and the people were provided 100 percent supply of imported foods. In spite of the ban on eating of locally grown coconuts, the people did not follow it. By early spring of 1978, medical monitoring showed such rapidly rising levels of radiation exposure that all the residents had to be removed from the island. Monitoring results showed that at the time of removal, about 50 percent of the population had amounts of radioactive cesium and strontium which would result in exposure above the annual RPG for individuals. Some individuals showed body levels of up to 1200 mrem.

The Bikini Island residents did not wish to leave the atoll and asked that they be moved to the nearby island of Eneu south of Bikini which was known to have considerably lower radiation residual levels in the soil then on Bikini Island. Acting on the recommendation of the Department of Energy, the Department of the Interior decided that the uncertainties of living on Eneu Island were such that relocation there should not be permitted. In 1980, the Bikinians requested again that Eneu be considered as a possible place of residence and indicated that the people would pledge to abide by any restrictions necessary to make Eneu safe for residential use. Accordingly, the Department of Energy provided dose assessments of alternate living patterns for possible residence on Eneu. These assessments indicated that if 50 percent of the diet of an Eneu community were to come from imported food, if restrictions on movement within the lagoon were followed, if no coconuts from the Bikini Island were eaten, that the estimated annual radiation dose could be lowered to 390 millirems and the maximum thirty-year whole body dose to 2,800 millirems. The Department, after considering all aspects, concluded that there was no way the U.S. could guarantee that imported food would be available at all times nor could there be any guarantee on the restrictions the people would have to follow. Under these conditions it was felt that the resettlement of Eneu Island was not practical. To date, the U.S. has not acted on the request that Eneu Island be used under restrictions for partial resettlement of the Bikinians.

There are, then, many similarities between the request of the people of Bikini and the request of the dri-Enjebi to return to their home island.

Three significant dissimilarities between the Eneu situation and the Enjebi situation should be noted.

1. The Department of Energy has estimated that exposure levels on Enjabi are approximately three times those on Eneu; this is the main reason that a diet of 50 percent imported food

yields dose assessments lower than the federal radiation standards on Eneu and higher than those standards on Enjebi Island.

2. The U.S. Government has returned the people of Enewetak to Enewetak Atoll although the dri-Engebi are not permitted to live on their northern home island. In contrast, the people of Bikini are still forced to remain on the small island of Kili (except for a small group of the 1978 evacuees who refused to return to Kili and have been provided temporary housing on the small island of Ejit in the Majuro Atoll).

3. Congress in a FY 82 Supplemental Appropriation provided for a $20.6 million Bikini Resettlement Project.[1] This is to provide basically for permanent facilities on Kili and Ejit Island since Bikini Island is off limits for residence and agricultural purposes for 60-90 years. Arrangments were made to place this money in a special Bikini Trust Fund. Interest will be for Bikini people support until they decide on what kind of facilities and where they wish these facilities to be constructed.

This current $20.6 million Bikini Resettlement project is being provided in addition to a commitment in the Section 177 Agreement of the Compact of Free Association which has a clause that reaffirms the U.S. commitment to provide funds for the resettlement of Bikini Atoll at a time in the future when radiaiton levels there are safe.

The Section 177 Agreement does not make such a specific commitment to make provision to return the people of Enjebi to their island at a future date.

The FY 82 Bikini Resettlement appropriation also provides an additional $400,000 for an experimental research program to determine whether soil removal from Bikini Island, or special planting methods, or other special agricultural techniques might appreciably reduce the strontium-90 and cesium-137 contamination levels and shorten the time for a permanent return to Bikini Atoll. The people of Bikini, ever since the Enewetak Cleanup which removed considerable top soil from Enjebi Island, have expressed dissatisfaction on the original 1969 Cleanup Program of Bikini Island which was conducted by the Department of Defense. No soil was removed from Bikini Island in the 1969 Cleanup program. The reason is that Bikini did not have high concentrations of transuranics, plutonium and americium in the top soil which was the case for Enjebi. The contamination in Bikini Atoll, and Bikini Island, is from the suburanics, strontium-90 and cesium-137, which permeate the soil to the water level and cannot be removed as is the case for the transuranics which concentrate in the few top centimeters of the soil and are removable.

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[1] The actual FY 82 Supplemental for Bikini was $21 million, i.e., $20.6 for resettlement fund, $400,000 for annual support costs. The Interior Appropriations Committee added an additional $400,000 for the soil research program.

The 1979 resurvey of Enjebi Island by the Department of Energy scientists indicated that the removal of up to six inches of top soil on Enjebi had not materially reduced the contamination levels of the suburanics there. Nonetheless, the people of Bikini believe that removal of top soil might change suburanic levels and they wish other experiments with imported soil and other techniques to be tried. Plans for experimental studies to be supported from the special $400,000 appropriation now are being made. It should be noted, though, that any actual results from plantings made under various experimental conditions will not be known for 6-7 years for such basic island crops as coconuts, breadfruit and pandanus.

This proposed agricultural experimental project to be carried out in Bikini Atoll, primarily on Bikini Island, while of long range interest, does not provide any immediate information on the Enjebi problem.

(8) Congressional authorization/opinions

When the Senate Armed Services Committee approved the authorization for cleanup of Enewetak, the committee directed that there should be no resettlement on Enewetak unless the lower AEC recommended exposure guidelines were met. There is no indication that this directive has been changed by Congressional action.

As noted earlier, the former legal counsel for the people of Enewetak strongly supported the conservative radiation exposure guidelines recommended in 1975 by AEC and concurred in by EPA for use for cleanup and resettlement in Enewetak Atoll. He later reversed this stance and argued that U.S. Federal Radiation standards should not apply to the people of Enewetak. Congress, on the other hand, has shown no indication that it feels the Federal Radiation Standards should not be applied. EPA has stated these standards do apply. On May 25, 1982, at the House Interior Appropriations Subcommittee hearings, the Chairman (Congressman Sidney Yates) expressed an opinion, that while he would like to see the dri-Enjebi back home, he did not believe his subcommittee should make the decision to permit a return now. Rather, it was one for the Secretary to make and to inform the Congress of his decision.

(9) Costs of resettling Enjebi Island

(a) Facilities: Construction on Enjebi for approximately 38 houses, cisterns, sanitary facilities, a school, a dispensary, a small dock, a church and community building, recreation facilities, a warehouse, the replanting of the island with approximately 10,000 coconut trees, other tree crops (pandanus and breadfruit) would cost approximately $8.5 million in 1982 dollars. Future costs of resettling Enjebi obviously would be greater due to a normal increase in population and cost escalation factors. Housing facilities would have some expansion capability by using the occupation density pattern of the Enewetak community housing, i.e., five individuals per house. This density pattern was used partly to provide for future growth.

(b) Support of a feeding program and other support costs: Since subsistence tree crops do not mature until 6-8 years after planting, an early return would require a minimum of 8-10 years of subsidized feeding. Enewetak Atoll lies in a dry belt and this makes the first several years of replanting one of uncertainty. In the southern islands, during the first two years, there was a considerable loss of seedlings due to storms, inadequate watering and fertilizing. Thus, for an initial period a grove maintenance program is required. Food and grove maintenance costs have averaged about $700,000 for the past several years in the southern communities. In the Agreement implementing Section 177 of the proposed Compact, financial provisions are made to continue the current feeding program for the entire Enewetak group for a period of not less than 10 years after the first anniversary of the effective date of the agreement. This will provide a consistent feeding program for the southern communities since the food crops should be in full bearing at the end of this ten-year period. If Enjebi were to be planted within the next year or two, these financial arrangements could be modified to subsidize a feeding program for a community on Enjebi Island. An unknown factor is the doubtfulness of whether the Enjebi Island coconuts should be considered for regular consumption after this postulated ten-year period. Current predictions are that it will be 30 years or more before low level radiation from the suburanics in the soil will be minimal. This factor brings into play the possible necessity of delaying planting of coconut trees on Enjebi even if a community were established there now, or working out a controlled diet pattern on the use of Enjebi coconuts after they become available. Either of these two alternatives would necessitate a longer than ten-year period of a feeding program.

(10) Benefits

The benefits of an early return to Enjebi are not readily measurable. A return in the immediate future would constitute recognition on the part of the United States of the right of Enjebi to determine their own future. It would serve to strengthen the cultural identity of the dri-Enjebi. They have been denied the use of their island for almost thirty-eight years with the result that the majority of the dri-Enjebi have never lived on their traditional homeland. Of the 190 dri-Enjebi now residing on the southern islands (or periodically on the island of Ujelang) probably less than 30 individuals were born on Enjebi. A few individuals were born during the temporary resettlement on Bijire Island during 1945-1946 but the majority of the dri-Enjebi were born in their half of Ujelang Island. There they maintained a semi-cultural identity by having their own designated section of the island. Currently, they continue to try to preserve a separate identity by virtue of the fact that most of the dri-Engebi families live on Medren Island in the southern half of the island which they have been permitted to use by the dri-Enewetak families who hold the traditional land rights on this island. The majority of the dri-Enewetak elected to have houses built on the main island of Enewetak which was the traditional home of the dri-Enewetak.

The U.S. Government by assuring a return, either in the immediate future or by secure provision for a future resettlement, would be acknowledging its past commitments to restore the displaced dri-Enjebi to their traditional home. As long as they are denied the use of Enjebi, they are without land rights which they can use in their own atoll.

Responsibility of the Department of the Interior for funding of resettlement aspects.

The responsibility of the Department of the Interior for funding of all rehabilitation and resettlement aspects of the Enewetak Program was delegated to the Secretary of Interior by the Office of Management and Budget in 1973. At that time, the agencies concerned in planning for a return, DoD, DOI, and AEC (now DOE), could not agree on funding responsibilities. Guidance was sought from the Office of Management and Budget. By official memorandum of October 18, 1973,[1] from the Director, Office of Management and Budget, the Department of Defense was given the responsibility for management and funding of all cleanup operations, the Atomic Energy Commission was delegated responsibility for management and funding of radiological monitoring and survey, and the Department of the Interior was delegated the responsibility for funding of all rehabilitation and resettlement aspects.

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[1] Memorandum of October 18, 1973 from Roy L. Ash, Director of Office of Management and Budget, to Hon. James R. Schlesinger, Secretary of Defense, the Honorable Dixy Lee Ray, Chairman, Atomic Energy Commission, and the Hon. Rogers C. B. Morton, Secretary of the Interior.

OPTIONS OR ALTERNATIVES

There are four major options or alternatives which may be considered. They may be summarized as:

A. Defer resettlement now but offer secure provision for a future resettlement.

B. Take no action.

C. Promote resettlement now.

D. Allow but do not promote resettlement.

Certain of these options have possible suboptions which further specify degree of U.S. commitment. The options, suboptions, and the pros and cons of each are set forth below.

OPTION A:

The U.S. Government defers resettlement of Enjebi Island at this time but makes definite provision for a future return when it is determined that both the one-year and thirty-year radiation can be reasonably met without artificial and untenable restrictions being imposed on life-styles.

NEPA Considerations

This option is covered by a Finding of No Significant Impact.

Budgetary Implications

Budgetary implications are involved and are noted in the sub-options below.

PRO:

1. The U.S. would be living up to its obligations under the Trusteeship Agreement to protect the health and welfare of the people.

2. Since available dose information is only an estimate and may prove to be too low, delaying resettlement would prevent unnecessary exposure to the dri-Enjebi.

3. The U.S. would be renewing its long-standing commitment to making Enjebi Island habitable again when exposure levels no longer would pose risks to the population.

4. Such action may preclude any future liability claims related to adverse health effects which could result if the U.S. promotes or allows an early return.

CON:

1. World opinion may object to the U.S. denying self-determination for the people of Enjebi.

2. It does not recognize the right of the dri-Enjebi to determine their own future, including the right to make their own decision to assume known health risks in order to return to their ancestral home.

3. The dri-Enjebi may attempt to sue the U.S. for the right to return if they are not allowed to return at this time.

SUB-OPTION A (1):

Through legislation establish a housing trust fund of approximately $8-10 million that could be used only when radiation exposure for residents of Enjebi falls below U.S. Federal radiation standards; the trust fund plus its interest would be used to construct a community and replant Enjebi Island.[1]

PRO:

1. A secure provision for future resettlement via the establishment of an Enjebi Trust Fund would be more acceptable to the people of Enjebi who fear that they will be forgotten or ignored both by the U.S. and by the Marshall Islands Government once the Trusteeship is terminated.

CON:

1. Establishment of a trust fund would tie up U.S. funds that would not be drawn upon for possibly 30 years. The U.S. might wish to choose other means than a trust fund to finance a future resettlement.

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[1] The trust fund proposal would specify that funds be set aside in a Federal interest-bearing account, from which funds could be withdrawn as required. This arrangement would reduce immediately outlays from the Treasury and would be consistent with the current position on the Bikini Resettlement trust fund.

SUB-OPTION A (2):

The U.S. Government by an official commitment assure the dri-Enjebi that the U.S. will provide the necessary community facilities and replant the island when resettlement is determined to be safe by Federal radiation standards.

PRO:

1. A trust fund cannot completely anticipate the eventual resources necessary for resettlement at a still undetermined date.

2. A firm and specific commitment to rehabilitate Enjebi Island in the future would be consistent with long-standing U.S. pledges to the Enewetak people.

CON:

1. The people of Enjebi and the people of Enewetak are distrustful of past U.S. commitments made with respect to radiation problems in the Marshall Islands. Commitments have been made with respect to the Bikini people which the U.S. could not meet.

2. The dri-Enjebi, as well as the dri-Enewetak, fear that if a future resettlement were to be handled by the Marshall Islands Government, the dri-Enjebi would receive less than the full amount necessary to rehabilitate Enjebi at the time of actual resettlement.

3. The Enewetak people in May 1982 petitioned the U.N. Trusteeship Council to continue a special U.N. Trusteeship Arrangement for Enewetak with the United States as the Administering Authority even after the termination of the U.N. Trusteeship for the rest of the Marshall Islands. To them, this would assure that the U.S. would live up to its pledges to make possible an eventual return of the dri-Enjebi to their home island.

4. Failure to make a secure provision for a return will further alienate the people of Enewetak and create increasing ill will.

OPTION B:

Take no action. The U.S. Government states that the Enjebi people have been returned to their atoll with a standard of living far greater than when they were removed. No further U.S. assistance beyond monitoring and health care, would be provided.

NEPA Considerations

Under this option the people of Enjebi are not subjected to radiation risk and no environmental impact statement would be required before the Secretary could make a decision.

Budgetary Implications

No further budgetary implications involving resettlement of Enjebi Island are involved.

PRO:

1. The United States Government would be saved any present or future costs of providing for a future resettlement of Enjebi Island.

CON:

1. This would disregard the long standing U.S. commitments of making the atoll inhabitable after the testing program.

2. Since the risk problem on Enjebi Island is one that applies primarily to one generation of people, a future return is feasible.

3. This position would disregard the cultural identity of the dri-Enjebi and treat them differently than the dri-Enewetak. It would maintain them in a subservient position to the dri-Enewetak on whose land they now reside in the southern islands.

OPTION C:

The U.S. agrees to a modification of the Resettlement Plan of the Enewetak Atoll to allow the dri-Enjebi to return to their home island as soon as possible. Facilities necessary for resettlement would be provided, as well as a feeding program to support the community until local food from Enjebi and the other northern islands become available.

NEPA Considerations

An EIS would be required before the Secretary could make a final decision.

Budgetary Implications:

Cost estimate for preparation of an EIS would be $300,000 and upwards if done by contract. A Master Plan for Resettlement also would be required. A preliminary Master Plan Concept for Enjebi was developed by Holmes & Narver, Inc. in February 1980 for the High Commissioner of the Trust Territory of the Pacific Islands, but this presents only a conceptual approach and a final Master Plan would have to be prepared in detail. Cost estimates for such a Master Plan would be in the range of $300,000.

Costs for an Enjebi Resettlement Project in terms of 1980 figures were approximately $8.5 million. This figure used a basic community of 55 families to be provided for in terms of housing, community facilities, planting of crops, upkeep of nurseries, and support costs for mobilization, construction and demobilization as well as supervision and operations. A conservative estimate in terms of FY 83 costs would be at least $10 million. This might be low in terms of mobilization costs since when the 1980 estimates were prepared, there was still a sizeable operating base on Enewetak Island. This no longer exists.

PRO:

1. Acknowledges the right of the Enjebi people, who are not U.S. citizens, to assess the risks of returning to Enjebi and to make their own decision.

2. Meets those provisions of the Trusteeship Agreement that requires the U.S. to foster political institutions, promote economic self-sufficiency, promote the social advancement of the people, and recognize cultural traditions.

3. Will allow the dri-Enjebi to live on their own land in which they alone have traditional land rights, a matter of great importance to their culture.

4. The risks to human health are predicted to be relatively minimal; future levels of radioactive contamination from suburanics generally are predictable since there is a low half life level; future doses generally should be predictable and should decline.

CON:

1. The Trusteeship Agreement requires the U.S. to protect the health and welfare of the people. The U.S. by its nuclear testing program has introduced a risk factor on Enjebi island that involves certain health hazards.

2. The available information on dosage, in spite of all scientific safeguards, still is only an estimate; exposures may turn out to be greater than predicted as the 1978 Bikini Island resettlement incident has demonstrated.

3. Potential predicted dosage depends on an artificial life-style surrounded by rigid restrictions, i.e., guaranteed consumption of specified amounts of imported foods, control of consumption of locally grown coconuts, etc. The Bikini Island situation has shown restrictions may not be followed.

4. Worldwide opinion may criticize the U.S. for disregarding the welfare of people in its trust by encouraging them to live under risk conditions that would not be allowed in the United States.

5. Congress has expressed opposition to resettlement unless the RPGs are met.

6. By promoting resettlement, the U.S. may increase its liability for additional adverse health effects that may result since a decision to promote an immediate return would be made while the U.S. still is the Administering Authority for the people of the Marshall Islands.

SUB-OPTION C (1):

The U.S. Government provides funds to build community facilities and housing on Enjebi Island, concurrently replants the island with subsistence crops; provides supplemental food until adequate food from local crops on Enjebi and other islands in the atoll and Ujelang is available.

PRO:

1. This would provide the same treatment currently afforded the dri-Enewetak and would be consistent with the U.S. obligation to compensate for results of the nuclear testing program in the Marshall Islands.

2. It would satisfy completely the request of the dri-Enjebi for a return in the immediate future and one which would allow them to resume their traditional life-style.

CON:

1. Locally grown food on Enjebi and nearby northern islands will provide a greater portion of the diet than other sub-options and may increase adverse health effects for the dri-Enjebi.

2. Replanting of coconut groves, breadfruit and pandanus trees, the basic subsistence food crops, would promote and encourage early resettlement of Enjebi Island.

3. By encouraging an early return knowing that certain health risks are present, potential liabilities for adverse health effects may be increased.

SUB-OPTION C (2):

The U.S. Government provides funds for necessary community and housing facilities on Enjebi but does not provide for replanting the island until DOE determines that eating locally grown foods will not result in exposures that exceed the yearly RPGs; concurrently, the U.S. provides funds for a subsidized food program.

PRO:

1. Since consumption of locally grown foods from Enjebi and other northern islands will be the most significant source of radiation exposure, the omission of local plantings of coconuts and other tree crops will reduce significantly the risks of an early return.

2. The southern islands of Enewetak and Ujelang Atoll are expected to provide the basic subsistence diet for the immediate future for both the dri-Enjebi and the dri-Enewetak.

CON:

1. Not planting tree crops on Enjebi Island drastically affects and changes the traditional life-style of the people.

2. There is no way to prevent the dri-Enjebi from planting local subsistence crops on their own volition. This would include fast growing vegetable crops as well as coconut trees and other tree crops. There is slight possibility that the dri-Enjebi would be content to live on a barren island.

3. Costs to the U.S. of providing a complete feeding program will be far greater than Sub-option (1). A feeding program is anticipated for the southern islands for only an 8-10 year period. In contrast, a much longer program must be considered for the island of Enjebi.

OPTION D:

The U.S. Government does not prohibit return to Enjebi Island by those individuals who wish to do so on their own. The U.S. does not, however, construct any facilities or engage in replanting until it has been determined that eating locally grown foods will not result in radiation exposures greater than the yearly RPGs. Supplemental food would not be provided directly to those people living on Enjebi.

NEPA Considerations:

This option would require an EIS before the Secretary could make a final decision.

Budget Implications:

There would be no budgetary implications at the present time under this option.

PRO:

1. Does not encourage or promote use of Enjebi Island now since no facilities or food will be provided.

2. Recognizes the importance of Enjebi to the dri-Enjebi and permits them to make it their residence on their own and by using their own resources.

3. Without provision of facilities, housing and community, only limited and probably intermittent residence would result. Radiation exposure, accordingly, may be lower. Total exposure to the population should be lower since not all of the dri-Enjebi would elect to return to Enjebi without outside support.

CON:

1. An unplanned and haphazard return would result in makeshift housing and random planting of crops. An uncontrolled life-style pattern would increase the risk of adverse health effects from radiation exposure.

2. The U.S. may be liable for additional health effects that might result even if the U.S. does not actively promote an early return.

VI.

Table of Estimated Doses and Effects

(based on dri-Enjebi population of 200)

Option	Years until return	Largest 1-year dose (whole body) mrem	Average 30-year dose (bone marrow) mrem	Additional Cancer Deaths over 30 years % Increase	No.	Average 30year dose (whole body) mrem	Additional Birth Defects over 30 years % Increase	No.
A	30-60	>500	>5000	negligible	negligible	>5000	negligible	negligible
	unknown	N/A	N/A	N/A	N/A	N/A	N/A	N/A
C 1	2-3	900	5100	2.0%	.4	4,600	0.92%	.04%
C 2	2-3	300-900	2300-5100	0.92% - 2.0%	.18-.4	1,800-4,600	0.36%-0.92%	.014-.04
D	1-?	*	*	*	*	*	*	*
RPG Standard	-	500 (250)@	N/A	N/A	N/A	5000 (4000)@	N/A	N/A

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* This scenario was not evaluated by DOE but values probably fall within the range given for Option 3 (b)

N/A = Not applicable

@ = Values in parenthesis recommended by AEC Task Force in EIS for use in resettlement planning.

> = Greater than

Senator MATSUNAGA. Thank you very much.

Our next witness is Mr. Jeton Anjain, Senator from Rongelap.

Senator Warner will now take over as acting chairman of our committee.

Thank you for your patience, all of you that have waited for so long.

Senator WARNER [presiding]. If you will indulge me for a moment, please.

[Pause.]

Senator WARNER. All right. We will now hear from you, sir.

STATEMENT OF HON. JETON ANJAIN, SENATOR, RONGELAP ATOLL, ACCOMPANIED BY RICHARD GERRY, COUNSEL

Senator ANJAIN. Thank you, Mr. Chairman.

For the record, I will introduce myself and my attorney who is sitting here.

Senator WARNER. I'm going to ask you to speak very loudly directly into the microphone. You have come a long way to provide some very important factual information for the benefit not only of this committee but the Senate as a whole and we're quite anxious to hear it. You can take whatever time you desire, but if you would speak with a strong voice directly into the microphone, please.

Thank you, sir.

Senator ANJAIN. Thank you, sir.

My name is Jeton Anjain. I'm the Senator from Rongelap Atoll.

On my left sitting with me is my attorney, Mr. Richard Gerry.

Mr. Chairman, because of our time limitation, I would ask Mr. Gerry to give you a preview or summarize the statement that I have before me here and it will be submitted to you within a few minutes, Senator.

Senator WARNER. Thank you, Senator. We appreciate very much your making the trip on behalf of your own interest and interest of others. We will now hear from your attorney.

STATEMENT OF RICHARD GERRY, COUNSEL, RONGELAP ATOLL

Mr. GERRY. Thank you, Senator Warner.

This is the first time, to our knowledge, that anyone from Rongelap has presented the special problems of the Rongelap people to the Senate of the United States.

The people from Rongelap are truly the forgotten people when we speak here in the United States about the problems in the Marshall Islands. Everybody knows about Bikini and the nice little swimming suits named after it. Almost all of us have heard of Enewetak and Bikini as being the site of the atomic testing, but few of us have heard of the atolls of Rongelap, Utirik, Watje, Likap and many other atolls downwind from those atomic tests which were radiated repeatedly by the 66 nuclear devices which were detonated on Bikini and Enewetak between 1946 and 1958.

The Rongelap people are not only the most-forgotten people in the Marhsall Islands but they are the most radiated, they're the most dispersed and the least compensated of all of the affected people there.

Unlike the people of Enewetak and Bikini, who were moved off of their islands before the Atomic testing program, the Rongelap people—although were moved off for the first test on Enewetak—were then moved right back onto their atoll, and lived there through all of the testing from 1946 to 1954, when the Bravo shot occurred on March 1.

With Bravo, it became impossible for us to ignore their plight any longer, because Bravo was twice as big as we thought it would be. It took a cloud of radioactive ash into the atmosphere twice as far as we thought it would go, and dropped 10 inches of that ash on the Atoll of Rongelap and much on the rest of the downwind islands.

The people of Rongelap had never seen snow before—or what they thought was snow, so they didn't hide from it but went out and reveled in the fact that they now could see it. The children picked it up, put in their mouth, they rubbed it on themselves and they wound up, contrary to the report, subsequent to the report of the Atomic Energy Commission, which said there had been no injuries, they wound up bald, with beta burns throughout their body. And they were taken from there then on the third day to Kwajalein.

And on Kwajalein, Americans began a totally unscientific investigation into what had happened to these people, which has continued to this day. We took their urine for testing for radiation exposure. We put it all in a pot—mixed it all together and tested it and said, that isn't so bad.

Since that time we have done other tests and other surveys in the Marshall Islands, and we have done them in about the same way.

We have had a radiation test conducted by air, where we would overfly the island and we would average the hot spots in with the low spots on the island and say, that's not so bad, when you get all the averages in. It might be a little bad for the person sitting right on the hot spot, but, you know, as the average, you guys are all right down there.

Since that time we have done another test which I'll tell you about. But I think really I should probably just as briefly as I can tell you about the basis of status in the Marshall Islands.

A person in the Marshall Islands, his status in life depends on his land, his ownership of land—not ownership in the sense that we think of it, because the land is owned by the family in perpituity, but by his rights in that land. And what we have done with the Marshall Islands people, a lot of them, the Enewetakians, the Bikinians, the Rongelapeses, we have removed their ability to use the land in which they have rights, and we have turned the Rongelap people, for example, from a proud warrior people in the old days to a landless people who live on other people's land as second-class citizens.

They were dispersed to Ebji—a stinkhole in the middle of the Pacific created by us; 8,500 people living on less than 60 acres. We have sent them to Majuro, where they own no land and have no status. And we have dispersed them throughout the other islands of the Marshall Islands and we have ignored them.

The people from Rongelap have not received any settlement money. They haven't received any of the other things that have been provided by this Congress for the people of Bikini and Enewetak.

In the survey that was done recently by the Department of Energy—copies of which this committee has—you can see that Rongelap Atoll has the same status radiologically speaking as Bikini. It is as radiated, it is as contaminated as Bikini. The Bikini people have been kept off their island for fear of the dangers to their health. The Rongelap people have been told that they can live there. Well, I heard testimony the other day before the House Committee that the Island of Rongelap and the Rongelap Atoll was habitable, the only thing wrong with it was you couldn't eat the food.

The trouble is, you see, we can't trust these people, they will want to eat the food on their island, the coconuts and the pondanos and their coconut crabs and the rest, but they're not trustworthy, we can't trust them not to eat the food from their island.

And, of course, they're told by the Department of Energy not to eat the food from any of these other islands in this atoll because those are definitely off limits for anybody; you shouldn't ever go there, you shouldn't eat the crabs from there, the fish from there, the birds from there. They don't tell them how they're going to tell whether that fish or that crab or that bird swims or flies over the Rongelap, they don't wear dogtags or any other method of identification.

So the only way they can be safe is to eat none of them.

We think that the first thing that has to be done for the people of Rongelap is to get them off of there before more of them become ill.

This Congress has recognized in the past that the fallout on Rongelap has caused very serious injuries to the people of Rongelap and has provided some minimal funding for those who have had to come to the United States and be operated on for cancers of the thyroid and other items like that.

We're going to have continuing problems like that.

My interest, of course, is as an attorney representing these people and a number of other of the Marshall Islanders. We have a doctor in the Marshall Islands. Sad to say, the only person, the only American in the Marshall Islands who is monitoring the health of these people at the present time in any fashion is privately paid for by contingent-fee lawyers. That's a sad commentary on this country.

He has found in his latest survey an additional 50 or 60 people with thyroid nodules. But we can't get them sent any place anymore because the Government of the Marshall Islands doesn't have anymore credit with Tripler Army Hospital, so we can't send them there. And we can't get them taken care of; there is no money for it.

Before they can be sent any place, the Burton Health Care bill has to be funded. If the Burton Health Care bill applies to people who weren't on Utirik and Rongelap, but applies to the rest of the people—or a somewhat new provision has to be made for these people.

Now, the people of Rongelap are not opposed to the Compact of Free Association. They want to have a continuing relationship with the United States; they want to have a closer relationship than the Compact of Free Association. They would be happy to have commonwealth. But they are unalterably opposed to the 177 agreement.

Enewetak has been partially cleaned up at a cost of $110 million. It is suggested that Bikini can be partially cleaned up at a cost of $60 to $130 million. Rongelap is about the same size as Bikini. Do we owe them less? Don't they have the same right to have their lands returned to the same condition that we took it from them? Should it not also be cleaned up?

But provided in the Compact of Free Association 177 Agreement is $17 million present value for all of the things that happened to the people of Rongelap; the inability to use their lands from 1954 till the present time; the injuries to their people—and it isn't only the thyroids—this man's nephew died of leukemia. And in the United States just recently, in Utah, Judge Jenkins found that leukemia, of the kind that killed his nephew, is one of the compensible types of cancer that follows fallout from the nuclear testing.

But we in the Compact say that his brother and his sister-in-law will have no right to bring an action in our courts for the death of their son, and that those hundreds of women who have had miscarriages, those women and men who have monster children will have no right to bring actions in our courts if this Compact passes.

We go further, and contrary to what has been testified to here, this is not because the government of the Marshall Islands wishes it, we were present when the government of the Marshall Islands time after time told the government of the United States we will not espouse the claims of our people, we do not look to espouse the claims of our people, we want you, the government of the United States, to meet your obligations to these people as individuals. But they were beat down by their own economic necessities. And for the first time in history—with the exception of the Iranian hostages—one government forced another government to espouse its people. And I, for one American, do not like to be cast in the same light as the Ayatollah Khomeini.

And the Compact reads that all claims—all nuclear claims shall be terminated and no courts of the United States shall have jurisdiction to entertain such claims, and any such claims pending in the courts of the United States shall be dismissed.

We have filed 3,000 such claims in the courts of the United States for people from the Marshall Islands. We have filed claims for 16 atolls in the Marshall Islands in the Claims Court of the United States. Others have filed other claims. And if you approve the Compact of Free Association and the 177 Agreement, we think that we can still convince the courts that you're wrong and that that is contrary to the constitutions of the Marshall Islands and the United States', but you will certainly be putting a serious roadblock in our way.

I'm sorry to take as much of your time as I have, but our people, the Rongelap people voted about 85 percent against the Compact. They are the ones with the claims. Other people with no claims were permitted to vote whether or not they had to accept this

Agreement. We wouldn't do that in the United States, and we believe that under the constitutions of the Marshall Islands and the constitution of the United States that the 177 Agreement is unconstitutional.

The problem with that is that our people don't have a lot of money to hire lawyers to fight those kinds of things, so you may be able by this to take away their rights, but I don't think that's what we want to do as Americans. Thank you very much.

Senator **Warner**. Thank you, Counselor. And we thank the Senator and we wish the Senator a safe journey back to his people.

Thank you very much.

We will now hear from Mr. Burney, representing the United States Tuna Foundation, and Mr. Walsh, the American Tunaboat Association.

I understand from the Counsel, and I'm filling in for the Chair, that you have prepared statements, which statements will be made a part of the record. And as a courtesy to the many witnesses waiting, we would hope that you could point out the salient provisions of your testimony and they will be duly noted.

STATEMENT OF DAVID G. BURNEY, COUNSEL, UNITED STATES TUNA FOUNDATION

Mr. **Burney**. Thank you, Mr. Chairman.

I'm David Burney, representing the United States Tuna Foundation, which is basically an umbrella organization for the U.S. tuna industry.

I would like to say at the outset that the U.S. tuna industry certainly supports the resolve of both the United States and the compact nations to retain strong political and economic ties. And we also appreciate the desire of the compact nations to obtain sovereignty and we concur in the United States support of this objective.

Our purpose today is not to object to the Compact of Free Association, but to point out to this committee some of the pitfalls that we see ahead.

I would like to preface my remarks—which will be brief—by stating that the U.S. tuna industry is an economic presence in the western Pacific. We almost support singlehandedly the private economy of American Samoa, a U.S. possession. We also contribute to the economies of Guam and the Northern Marianas, which are also tied to the United States. And that's why the Compact of Free Association is of concern to us.

I'll point out what we consider to be the principal conflicts in the Compact of Free Association which, in our judgment, should be resolved prior to a final decision being made on the compact.

First of all, the island nations which are parties to the compact have conflicting juridical claims with the United States over highly migratory species of tuna.

Our vessels operate in and around the compact area. And the compact nations recognize jurisdictions over tunas out to 200 miles, while the United States recognizes jurisdiction over tunas out to 12 miles.

In the compact, we have agreed to provide funds for the surveillance and enforcement of the compact nations' juridical zones.

Therefore, in essence, what we are doing is providing funds for the enforcement of laws that are contradictory to the law of the United States with regards to jurisdiction over tunas. We think this should be resolved.

We think there is a spirit of cooperation between the U.S. tuna industry and certainly the Federated States of Micronesia to work these details out, and we think they should have been made a part of the compact so we don't face the unfortunate prospect of entering into this Compact of Free Association having U.S. tuna vessels seized by funds provided by the United States within the retaliation under the Fishermen's Protective Act of an embargo of all fishery products coming in from that area. That's not what anybody has intended. We think it was an oversight while negotiating the Compact of Free Association that this particular issue wasn't recognized and dealt with, and we think it should be dealt with prior to Congress taking action on this Compact of Free Association.

We also are concerned with the fact that we are providing a duty-free zone from compact nations to the United States. We think this is not only going to have an adverse impact on the U.S. tuna industry, but it's going to have an adverse impact on American Samoa, the Northern Marianas, and Guam, because they're in competition out there for the same resource.

Tuna is one of the most valuable renewable resouces in that area of the world, and it's something that should have been recognized by those negotiating the compact and dealt with, and it shouldn't have been dealt with adverse to the interests of our other U.S. possessions and territories in that area.

Everybody should have been brought to the table and the subject should have been discussed, and we believe an accommodation should be made that is in the mutual interest of all parties.

Those are the two major points that we wanted to bring out to this committee, and we hope that you will take the time to analyze those before the compact is passed. Thank you.

[The prepared statement of Mr. Burney follows:]

STATEMENT OF

DAVID G. BURNEY, COUNSEL
UNITED STATES TUNA FOUNDATION

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
May 24, 1984

Mr. Chairman and members of the Committee:

The United States Tuna Foundation is a non-profit, mutual benefit corporation, representing each of the segments of the U.S. tuna industry, including tuna vessel owners and operators, tuna vessel crew members, tuna processors, and cannery workers.

The tuna industry appreciates the enormous amount of time and effort that has been expended on the subject matter of S.J. Resolution 286, the Compact of Free Association. We support the resolve of both the United States and the Compact nations to retain strong political and economic ties. We also appreciate the desire of the Compact nations to obtain sovereignty and we concur in the United States support of this objective.

The Compact is of particular interest to the U.S. tuna industry since the U.S. tuna fleet, the last of this country's distant water fishing fleets, presently operates in and around the Compact area. In addition, U.S. tuna processing facilities are located in American Samoa, a U.S. possession located in the general vicinity of the Compact area.

For this reason we have spent considerable time reviewing the Compact. Our review leads us to conclude that several of its provisions must be modified or the mutual objectives of the parties will be thwarted.

The Compact recognizes the right of the Marshall Islands and the Federated States of Micronesia (Compact nations) to conduct foreign affairs, with regard to the living and non-living resources of the sea, "to the full extent recognized under international law" (Article II, Section 121(b)(1)). The Compact fails, however, to acknowledge or deal with the fact that the Compact nations' interpretation of international law with regard to highly migratory tunas is in conflict with U.S. law and policy.

The United States neither claims nor recognizes a coastal state's right to exercise or enforce jurisdiction over tunas beyond 12 nautical miles of the base line from which the breadth of the territorial sea is measured. The United States maintains that this policy is consistent with international law and the Law of the Sea Treaty. This U.S. policy was recently reaffirmed by President Reagan in the Exclusive Economic Zone Proclamation of March 10, 1983.

The Compact nations do not share the U.S. view with regard to tuna jurisdiction. They have interpreted international law as permitting them to exercise jurisdiction over tunas throughout their 200-mile fisheries management zone.

The failure of the Compact to resolve the conflicting views with regard to jurisdiction over tuna may well lead to an immediate confrontation since U.S. tuna vessels currently operate in and around the 200-mile zones claimed by the Compact nations. While U.S. tuna boats presently operate pursuant to a regional licensing agreement, the agreement is set to terminate on December 31st of this year. Thus, it is important that the Compact clarify U.S. tuna fishing rights in the Compact area.

If U.S. tuna fishing rights are not clearly established in the Compact, U.S. laws with regard to protecting our distant water fishing fleets become critically important. U.S. law provides that if any U.S. vessel is seized by a "foreign country" on the basis of claims not recognized by the United States, the seized vessel is to be reimbursed for the costs associated with the seizure and sanctions are to be imposed against the offending foreign country. (MFCMA (PL 94-265) 16 U.S.C. 1801-1882; FPA (PL 83-680) 22 U.S.C. 1971-1980) While the United States does not recognize a claim of jurisdiction over tunas beyond 12 miles, the question remains as to whether or not the Compact nations will in fact be recognized as "foreign countries". We do not believe that it was the intent of the United States in drafting the Compact to permit total disregard of U.S. laws and policy, however, this could be the result if the status of the Compact nations is not clarified.

We are also concerned that the United States has agreed under the terms of the Compact to provide monies to the Compact nations for the surveillance and enforcement of their claimed maritime zones. The United States could end up supporting the surveillance and enforcement of laws (extended jurisdiction over tunas) which are in conflict with U.S. law and policy.

Another matter that should be addressed is the potential consequence of the dispute settlement provision contained in Title 4, Article II, Section 423, of the Compact. This provision provides that if any dispute arises between the parties and it is not settled within 90 days, any party involved in the dispute may refer the issue to binding arbitration. Thus, the United States could be forced to submit its law and policy with regard to jurisdiction over the living and non-living resources of the seas to binding arbitration. It is hard to believe that this was the intention of the United States when drafting the Compact.

The majority of the tuna industry is equally concerned with the proposed establishment of a "free-trade zone" between the United States and the Compact nations as set forth in Article IV, Section 242, of the Compact.* This carefully drafted provision permits duty-free imports into the United States from Compact nations without any restrictions being placed on foreign investment. Thus, foreign governments could set up processing facilities and transshipping points in Compact nations in order to export tuna products into the United States duty free. This not only threatens to destroy the economic viability of the U.S. tuna industry, it could also prove to be the death knell for the economies of other U.S. possessions and territories in the area. American Samoa is a prime example of a U.S. possession in the area whose entire private sector economy is dependent on the U.S. tuna industry.

The tuna industry's concern over imports is not an idle one; both the U.S. Congress and the International Trade Commission have concluded that the tuna industry is import-sensitive. Tuna products were excluded from the duty-free treatment provisions of the recently enacted Caribbean Basin Economic Recovery Act (CBI). In addition, the International Trade Commission has rejected petitions requesting Generalized System of Preferences (GSP) treatment for canned tuna products from various "developing countries". Nevertheless, the import situation has become so serious that the U.S. tuna industry recently filed a Section 201 Trade Act case which is set for hearing before the International Trade Commission on June 5, 1984. The "free trade zone" provision of the Compact must be studied further in order to ensure that it does not have unintended results.

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* One U.S. processor, which is the largest owner and operator of tuna vessels, believes that it is in the industry's best interest to have shipments from the compact nations treated the same as from American Samoa.

In summary, the tuna industry believes it was an error to submit the Compact to Congress before consulting with those U.S. private sector interests that undoubtedly will be affected by its substantive provisions. We submit that further consultation and study is necessary to ensure that the Compact does not undermine U.S. policy and economic objectives in the Western Pacific area.

STATEMENT OF JAMES P. WALSH, WASHINGTON COUNSEL, AMERICAN TUNABOAT ASSOCIATION

Mr. **Walsh**. Thank you, Mr. Chairman.

I represent the American Tunaboat Association, which is the association made up of the long-distance tuna purse seine vessels which make up one of the major sources of raw tuna for the canning sector of the economy.

I, of course, endorse Mr. Burney's comments and want to elaborate on a couple of points that might be useful for the committee's record.

First of all, as David indicated, we do not recognize a claim that has been made by these island governments to jurisdiction over tuna beyond 200 miles. However, we have recognized, because of the value of the resources in this area, and because of an effort to avoid confrontation in the area, our industry—our association has engaged in negotiations and has signed two agreements in this area; however, only one of the compact entities is involved, and that's the Federated States of Micronesia.

We have other agreements with other governments—other island areas that cover a substantial portion of about 6 million square miles of ocean where are found probably right now the most abundant schools of tuna.

That agreement is basically a practical deal. We have set aside our juridical position and they have set aside their juridical position; and, for that, we receive licenses, we pay fees, we engage in research, we provide information, and so far it's working very well.

What's going to happen under this agreement, Mr. Chairman, however, is that we will be faced with a government that will now be an sovereign entity, more or less. It will be an entity that will be looking at tuna as a major source of possible income. It will be a government that will be faced with requests from countries such as Japan and Korea—our competitors—for access to these same areas.

Now, what has not happened in the compact is the issue of jurisdiction over tuna, how it is to be handled, has not been resolved.

And briefly let me explain that. During the pendency of this negotiation there was one of the most complicated negotiations underway anywhere in the Law of the Sea Conference.

During the pendency of the Law of the Sea Conference, it was the United States belief and it was the tuna industry's belief that this conference would resolve the tuna jurisdiction issue. Therefore, the only thing that was done in connection with this negotiation was for the State Department to say well, we will leave it up to international law.

They left it up to international law—which you may be familiar with—has not resolved it adequately. In fact, this country has refused to sign that agreement.

Senator **Warner**. If I might inject. I was a delegate to the Law of the Sea Conference for 5 years. I know of what you speak.

Mr. **Walsh**. So we have a situation in which the resolution of our difference of opinion was left to international law; and, instead, we face—what we're afraid of, Senator—you're probably familiar with this—we do not—our industry does not want to go through with what we went through with the Latin American countries. We do not want seizures; we do not want confrontations with gunboats; we want to have a peaceful existence. Therefore, we think that you should consider—to the extent that you can, and to the extent that you can affect this issue—to resolve the access issue so that we aren't faced with a possibility when our agreements run out—and they run out this year—with incredible kinds of demands, incredible kinds of tradeoffs with a government that may more or less feel: well, you know, we're going to take something different.

We have major investments in our vessels. We are having a very difficult economic time. And that's another thing we have tried to tell these governments, you can't just go out and say we have got 200 miles over tuna and now we are going to be rich. Mexico has tried that, and they are at least $450 million in debt—probably more than our industry and we're a lot larger than they are, and they aren't catching much tuna.

It is a very delicate industry. It is low margin, and we are being beaten badly by imports at the moment.

It's the kind of thing that if you handle it badly, you set it up wrong, you're going to hurt the industry. And, as David has said, American Samoa will be greatly affected. And the only people who will benefit will be our competitors in Thialand and elsewhere.

So we are urging you to look at this and see what can be done to resolve it, and to help avoid what can be a very, very confrontational issue in this region.

Thank you, sir.

[The prepared statement of Mr. Walsh follows:]

TESTIMONY

By

JAMES P. WALSH
WASHINGTON COUNSEL
AMERICAN TUNABOAT ASSOCIATION

Before the
Committee on Energy and Natural Resources
United States Senate

Hearings on the Compact of Free Association

May 24, 1984

Chairman and Members of the Committee:

I am Washington counsel for the American Tunaboat Association ("ATA"), a non-profit fishery cooperative made up of nearly all U.S. flag tuna fishing vessels, based in San Diego, California. ATA represents 101 of the 120 U.S. tuna purse seine vessels. ATA member vessels land about 85% of the total tropical tuna catch of U.S. tuna fishermen. Our principal markets are the U.S. processing companies which operate canning plants located in Southern California, American Samoa and Puerto Rico.

Thank you for the opportunity to appear before your Committee today and to provide our views on the Compact of Free Association (the "Compact") recently submitted by President Ronald Reagan to the Congress for its approval. If Congress approves the Compact, it would establish a new political relationship between the United States and the political entities now comprising the Trust Territory of the Pacific Islands and would end the United Nations trusteeship for these islands conferred on the United States in 1947. Because our fleet represents a major United States presence in the Central and Western Pacific, we wish to set forth our concerns about terms of the Compact that affect us.

Cooperation Between the Tuna Industry and the Trust Territory of the Pacific Islands

For the last several years, the U.S. tuna fleet has shifted its fishing emphasis from the traditional fishing grounds of the Eastern Tropical Pacific (east of 150 degrees longitude) to the broad fishing areas in the Central and Western Pacific. Over six million square miles of ocean are traversed by our fishing fleet in this large region of ocean while searching for schools of market tuna, mainly skipjack but also some yellowfin. Last year over 50% of our total harvest, over 100,000 metric tons of fish, was caught by our vessels operating in the Central and Western Pacific. For the foreseeable future our fleet will continue to focus on the schools of tuna found in this area.

With such a quick shift to this new area, a fully complete infrastructure for supporting our vessels has not been developed. Yet, because of the wide range of the typical 1,200 ton tuna seiner, we are able to operate in this area by basing our operations in U.S. territories, in particular, in Guam, the Northern Mariana Islands, and American Samoa and in Hawaii. From these bases, we can harvest and deliver our fish directly to the canneries located in American Samoa and transship to the canneries in Southern California and Puerto Rico.

We obviously recognize the need to cooperate with all the island governments in the region. It is our strongly held view that the tuna resources of the region can only be managed through a multi-national management organization which would effectively address the conservation of these fishery resources throughout their range. To that end, we have developed industry-to-government regional agreements to facilitate cooperation. I will address these agreements later in my testimony.

U.S. Tuna Policy

Before discussing these important agreements, it would be useful to outline for this Committee existing U.S. law and policy with regard to the management of tuna, especially the critical question of jurisdiction. Under the Magnuson Fishery Management and Conservation Act and President Reagan's recently declared Exclusive Economic Zone, the United States neither claims, nor recognizes any claim to, jurisdiction over tuna beyond 12 miles from the coastline. As a highly migratory fishery resource which traverses several thousand miles, tuna cannot be properly managed by a single nation seeking to realize its own limited ends. Tuna can be harvested throughout its range and if one country attempts to impose a unilateral solution on the tuna management issue, it will find its neighbor may do something entirely different, to the detriment of the entire resource and everyone's interest. Thus, the basic biological characteristics of the tunas dictate the best political and juridical management system.

What this policy means is that our fleet, supported by the United States government, may fish for tuna anywhere on the high seas outside 12 miles from shore. Under the Fishermen's Protective Act, if any of our tuna boats are seized by by a nation claiming broader jurisdiction over tuna (i.e. out to 200 miles), an embargo may be placed against any tuna products coming from that country and our fishermen are provided assistance to cope with the economic losses caused by the seizure.

We feel very strongly about this policy and believe that our corollary policy of promoting international management of tuna is the fairest approach to differences we may have with other countries on the jurisdiction question. Let me now turn to a discussion of the agreements we have reached with the Pacific island governments.

Cooperative Fishing Agreements

Our industry wishes to ensure good relations in the Central and Western Pacific and, notwithstanding our strong position on the juridical issue, we have attempted to reach fishing agreements with various nations and governments in the region. The purpose of these agreements is to facilitate rational utilization of the resource while at the same time taking into account the island governments' desire for a say in the management of the resource.

Consequently, we have signed two agreements: one with the government of the Republic of Kiribati, the Micronesian Maritime Authority and the Palau Maritime Authority; and a second one with the Government of New Zealand (in respect of Tokelau), Niue, Tuvalu and Western Samoa. Both of these agreements accomplish the same objectives; both are, however, of limited duration.

Under the agreements, ATA member vessels will purchase fishing licenses within the claimed 200 mile fishing control zones of the signatory licensing entities. Fees are paid and records are kept for the benefit of the licensing parties. We have also agreed to not fish within 12 miles and to provide information about access and egress from fishing areas. I will gladly supply a copy of both agreements, which we request be made a part of the record of these hearings.

To date, we believe both sides have been generally satisfied with the performance under the agreements. The licensing entities or governments have been provided information about the tuna resources in the region and have realized income from license fees to cover their costs. For ATA member vessels, we have been able to fish in a valuable fishing area without risk of confrontation with local governments due to our differences. In short, we have set aside (but have not relinquished) our juridical views to accommodate our mutual interests.

Mr. Chairman, we view these agreements as absolutely critical to the future of our fleet in the region. We maintain our position that international law does not recognize jurisdiction over a fishery resource that cannot be rationally managed by a single country and can only be managed effectively through a multi-national body. We are thus seeking to bring about a single management entity throughout the Central and Western Pacific that would involve all the interested island nations as well as all the fishing nations, which include the United States, Japan, Korea and many others. Unfortunately, the Compact will impact our ability to achieve this goal.

The Compact of Free Association

You have before a proposal to adopt a joint resolution approving the Compact of Free Association as negotiated by representatives of the United States and representatives of the Federated States of Micronesia and the Marshall Islands. We have no difficulty in the basic principle of allowing these entities to end the United Nations Trusteeship and to become relatively independent, and support their aspirations. Yet we continue to be troubled about the prospects for relations between the United States and these newly sovereign governments on the question of tuna jurisdiction. We are also concerned that these new governments may have the impression that tuna resources offer their only major opportunity for development and that it is relatively simple to profit from the tuna business.

Unfortunately, the tuna business is presently doing very poorly in the United States because of import competition from Thailand, the Philippines and Taiwan, among others. The profit margins for the processing sector are either very low or nonexistent and most of our tuna boats are bankrupt because of their inability to cover costs with the low fish prices they are receiving.

Therefore, Mr. Chairman, we would like to raise with you some concerns, which we hope can be dealt with in the process of approving the Compact. First of all, we recommend that the Senate provide, in the Joint Resolution or otherwise, that U.S. flag tuna vessels be given access to the tuna resources of the region as a condition for approval of the Compact. Because of the manner in which the Compact was negotiated and the similtaneous pendency of the United Nations Law of the Sea Conference, very little attention was given to the tuna question in the Compact negotiations. The solution of simply saying that each Compact island government will have such ocean juridiction as is recognized by international law has left the issue in a very uncertain and unresolved status. Therefore, we are not comfortable with the present language in the Compact on the tuna question.

In light of the United States' interests in the area, the friendly relations between the Trust Territory of the Pacific islands and our country, and the major new financial commitments that will be made to these new governments, we feel a firm commitment for access for our fleet throughout the life of the Compact is not a major request. Obviously, others will want access to the area, for example Japan. We would find it incongruous that we would have to compete with the Japanese for access in this area given past history.

Secondly, we have concern about the duty-free treatment provisions of the Compact. Allowing new tuna plants based in the Compact islands duty free entry for their products into the U.S. market is very threatening. Not only would this add to what is already a significant problem for our industry, it would pose serious problems for Guam, the Northern Mariana Islands and American Samoa in particular where 99% of that territory's exports are canned tuna. It would also severely impact our plants in Puerto Rico. Obviously, there is a major trade-off here, Mr. Chairman, which poses real concerns to our friends in the other territories; therefore, we recommend that you reconsider whether duty free treatment for tuna products is an appropriate benefit to confer in the Compact.

Finally, Mr. Chairman, we do not believe that the tuna jurisdiction issue, which is as much political as it is a question of international law, should be submitted to arbitration. Our government should reserve its right to continue its chosen policies without having to submit manditorily to arbitration. There are precedents for this approach to particular National policy questions; we hope your committee will consider them.

Summary and Conclusion

Mr. Chairman, it is not our intention to prevent approval of the Compact by the Senate for it has many benefits for our country and for the Federated States of Micronesia and the Marshall Islands. But given the substantial interest our industry has in the region, we cannot ignore the dangers to our industry posed by the proposed new arrangement. We feel it would be preferable to settle the tuna question at the outset and eliminate any potential controversy that may hinder later good relations between our country and the newly established Compact governments.

That concludes my testimony. I will be pleased to answer any questions you may have.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KIRIBATI, THE MICRONESIAN MARITIME AUTHORITY, AND THE PALAU MARITIME AUTHORITY AND THE AMERICAN TUNABOAT ASSOCIATION

The Government of the Republic of Kiribati, the Micronesian Maritime Authority and the Palau Maritime Authority (or its successor) (hereinafter referred to as the "Licensing Parties") and the American Tunaboat Association (hereinafter referred to as the "Association");

ACKNOWLEDGE the exclusive fishery management authority of the Licensing Parties to the full extent recognized by international law; and

DESIROUS of establishing reasonable and uniform conditions applicable to all vessels for the purpose of governing the operation of fisheries of mutual interest,

HAVE AGREED AS FOLLOWS:

1. The Licensing Parties shall permit fishing by Association member vessels within the area described in Appendix A (hereinafter referred to as the "Zones"), except in such areas as are designated in Appendix A as closed areas, in accordance with the provisions of this Agreement and applicable laws and regulations of the Licensing Parties.

2. The administering authority (hereinafter referred to as the "Administrator") acting on behalf of the Licensing Parties in administering the terms and conditions of this Agreement shall be the Micronesian Maritime Authority, until the Licensing Parties notify the Association of a change in Administrators.

3. Association member vessels shall not fish in the Zones except under the terms and conditions specified in this Agreement and in accordance with applicable laws and regulations. The Administrator shall provide the Association within 30 days of the effective date of this Agreement, copies of all such applicable laws and regulations, and changes in applicable laws and regulations within 30 days of the effective date of such changes.

4. Association member vessels which engage in fishing in the Zones must have in their possession Certificates of Access issued by the Administrator. The Association shall apply on behalf of its members for Certificates of Access on the form set forth in Appendix B. A true copy of the current certificate of ownership issued by the country of registration shall accompany this application and shall be accepted for the purpose of establishing the net registered tonnage of the applicant vessel.

5. The administrator will promptly review applications for Certificates of Access, and issue Certificates valid to December 31, 1983 for the first year, and December 31, 1984 for the second year, upon the payment of fees hereinafter described. Certificates of Access issued pursuant to this Agreement, or true copies thereof, shall be prominently displayed in the wheelhouse of Association member vessels fishing in the Zones. There shall be no transfer of Certificates of Access.

6. An applicant may begin fishing within the Zones upon receipt of a Certificate of Access. In order to alleviate time difficulties where necessary, the Administrator may authorize qualified vessels to begin fishing prior to having received a Certificate of Access. In such cases, the Association shall immediately provide to the Administrator, by cable or other means, the current position of the vessel and the information required in Appendix B. Upon the determination that the vessel is qualified, the Administrator shall immediately dispatch the Certificate of Access number to the Association. Prior to the receipt of the Certificate of Access, the number issued by the Administrator shall be sufficient evidence of said Certificate. Payment of the fee described in paragraph 7 shall be made within thirty (30) days of the issuance of the Certificate of Access number. Failure to submit payment within the stipulated time will result in the cancellation of the Certificate of Access number.

7. The Administrator shall issue certificates of Access contingent upon the payment of a fee of U.S. $55 per net registered ton for the first year and U.S. $60 per net registered ton for the second year. In the event of substantial improvement in the market situation during the first

year of the agreement, the Licensing Parties and the Association agree to a correctional review of the fee schedule for the purpose of increasing the second year fee to reflect such improvement. The Association shall be responsible for the collection and transmission of all fees to the Administrator. There will be no refund or pro-ration of fees.

8. After written notice and consultation with the Association and the Licensing Parties, the Administrator may take the following actions:

(a) Deny an application for a Certificate of Access to an Association member vessel. The reasons for such denial shall be provided in writing to the applicant, the Association and the Licensing Parties. The applicant shall have the opportunity to re-apply, without prejudice.

(b) Cancel and withdraw the Certificate of Access of any Association member vessel which has committed acts in contravention of this Agreement. The effective date of such cancellation and withdrawal shall be no earlier than ten (10) days from the date of written notification by the Administrator. The Certificate holder or the Association may appeal the cancellation. The Association shall secure and promptly dispatch to the Administrator any such cancelled Certificate and all true copies thereof.

9. The Licensing Parties recognize that there is presently no information establishing that the optimum yield of the resources covered by this Agreement will be adversely affected by the fishing activities of Association member vessels during the term of this Agreement.

10. Catch reports for all reported and submitted data shall be completed and transmitted to the Administrator through the Association for all fishing within the Zones by Association member vessels three times a year (i.e., May 31, September 30, and December 15). In addition, a final catch report for each agreement year shall be completed and transmitted to the Administrator through the Association when all data for that year are

reported and submitted. The Association shall submit a list of all vessels holding Certificates of Access which conducted fishing operations in the Zones during the period and a separate list of such vessels which did not conduct such fishing operations within the Zones during the period.

Consultations shall be held by and between the scientific consultant representing the Association and representatives of the Licensing Parties on a semi-annual basis for the purpose of reviewing the catch and effort statistical data recorded by Association member vessels within the Zones. Such consultations shall endeavor to recommend measures to improve the data collection and reporting actions undertaken by the Masters of such vessels, taking into account the form set forth in Appendix C.

11. Masters of Association member vessels shall maintain a logbook on board the vessel to record catch and effort data sufficient to enable the Association to comply with the terms of this Agreement. After proper identification is established, the Masters of such vessels shall make such logbook available for inspection by officers authorized by the Licensing Parties.

12. The Licensing Parties and the Association shall ensure the confidential character of information, records or statistics pertaining to fishing by Association member vessels within the Zones.

13. Fishery activities by Association member vessels shall be conducted in a manner which will not disrupt traditional, and locally-based fisheries, and all turtles and reef fish taken during the course of the purse seine fishery shall be released in a manner which will provide this miscellaneous catch with the greatest chance for survival.

14. After proper identification is established, Masters of Association member vessels shall allow authorized enforcement officials to board and inspect their vessels at any time within the Zones, in accordance with international law. Arrests and seizures shall not be made unless such officer has reasonable cause to believe as a result of such search or

inspection that any such vessel or any person has committed an act in violation of the terms and conditions of this Agreement or applicable laws and regulations of the Licensing Parties as provided pursuant to paragraph 3. Boarding and inspection shall be conducted expeditiously and with a minimum of interference with the fishing operations and a minimum risk to the vessel or crew.

15. The Association will appoint and maintain agents in Ponape, Tarawa, and Palau. Such agents will be authorized to receive and respond to any legal process issued by a court of competent jurisdiction.

16. The Association shall provide the following information to the Administrator by telex or cable:

(a) Notice of actual time of entry of an Association member vessel into the Zones;

(b) Notice of exit of an Association member vessel from the Zones and notice of whether such vessel had fished during time spent in the Zones.

The Association shall make its best efforts to transmit to the Administrator the additional information contained in the form set forth in Appendix D.

17. Each vessel issued a Certificate of Access will display the following identification marks:

(a) The radio call sign of the vessel will be displayed in a prominent position on the vessel where it can readily be identified from the air or sea;

(b) The letters and numbers constituting the radio call sign will be at least one meter high, clear and distinct and colored black on white, white on black or similar contrasting colors; and

(c) Association vessels shall continuously monitor the international distress radio frequency 2.182 and 156.8 MHz (Channel 16, VHF) for the purpose of facilitating communication between such vessels and air and seaborne authorities of the Licensing Parties wishing to establish the credentials of a vessel in the Zones.

18. Association member vessels may utilize the legally designated ports within the Zones, subject to the availability of facilties and supplies and the needs of the respective jurisdictions, and in accordance with the laws and regulations applicable in such ports. The Licensing Parties will seek to ensure that Association member vessels are granted the appropriate entry authorization to enter legally designated ports within the Zones. Each Licensing Party shall, within thirty (30) days of the date of signature of this Agreement, notify the Association of the port entry procedures to be followed within its jurisdiction.

19. With respect to the Republic of Palau and the Federated States of Micronesia an application for a Certificate of Access shall be considered an application for a multiple entry permit.

20. In case of seizure of an Association member vessel or the arrest of its crew, the relevant Licensing Party will notify the nearest available Agent of the Association or the Association of this action. The Licensing Party will seek to ensure that a seized vessel and arrested crew members are promptly released subject to reasonable bond or other security as may be determined by the appropriate court.

21. Recognizing the limited availability of statistical information on catch and fishing effort within the Zones, the Licensing Parties and the Association acknowledge the value and need of an effective scientific data program. The Administrator shall propose programs that will allow authorized scientific technicians to monitor fishing activities during the term of this Agreement by participating in up to a maximum of ten (10) voyages. The terms and conditions of such programs shall be subject to approval by the Association and the Licensing Parties.

22. Adequate and complete insurance including, but not necessarily limited to, collision, protection and indemnity, and oil pollution liability insurance shall be maintained for Association member vessels fishing within the Zones.

23. With the approval of the Licensing Parties and the Association. states in the region may become parties to the Agreement. In the event that the Licensing Parties and the Association approve a new entrant, a meeting shall be convened by the Licensing Parties, the Association, and the new entrant for the purpose of renegotiating the fee in paragraph 7 and the description of the Zones in Appendix A. Except as agreed by the Parties, no other provisions of this Agreement shall be reopened for negotiation.

24. The Association shall make its best efforts to ensure that its member vessels comply with the provisions of this Agreement and applicable laws and regulations pursuant to paragraph 3. The period of this Agreement shall be January 1, 1983 to December 31, 1984. At the written request of either the Administrator, a Licensing Party, or the Association, on reasonable notice, consultations shall be held with respect to any problems which may arise in the course of the implementation of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their principals, have signed this Agreement on the date and place shown.

Micronesian Maritime Authority

Date: Feb 24, 1983

August Felando

August Felando, President
American Tunaboat Association

Date: 24 February 1983

Palau Maritime Authority

Date: 2/24/83

Af
1/24/83

Government of the Republic of Kiribati

Date: ______________________

APPENDIX A

AGREEMENT AREA

The attached chart identifies the area included under the terms of this agreement, which is the area outlined in red.

Within the area are a number of zones. The boundary lines of these zones are indicated without prejudice to negotiations which might be required to fix boundary lines in areas of overlapping or conflicting jurisdiction.

Due to the small scale of this chart, the exact position of features cannot be guaranteed. When there is any doubt, large scale charts should be consulted.

Baselines, as referred to in this Appendix, are lines following the seaward edge of a reef system, which lines connect the outermost elevations of the reef which are above water at low tide. When in doubt, a large scale chart should be consulted.

CLOSED AREAS

The following areas are closed to fishing under the terms of this agreement.

ZONE B

1. Within 3 nautical miles of all island and reef baselines.
2. Within 12 nautical miles of baselines in the Palau Islands group.
3. Within 50 nautical miles of the entrance to Malakal Harbor at the reef, with the exception that the Administrator may approve limited fishing within this area on a case by case basis.

ZONE F

1. Within 12 nautical miles of the island and reef baselines.
2. On named bank areas less than 40 fathoms.

ZONE K

1. A 12 nautical mile radius around each island.
2. In the case of Abaiang, Tarawa and Maiana, the areas between the islands are closed areas, as is also the case with the areas between Abemama, Aranuka and Kuria, and also the area between Beru and Nikunau.

APPENDIX B

APPLICATION NO.__________

APPLICATION FOR FISHING
IN THE FISHERY ZONES OF THE REPUBLIC OF KIRIBATI, THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF PALAU

1. Name of Applicant____

2. Address of Applicant____

____

3. Name of Owner:____

4. Address of Owner:____

____

5. Vessel Name:____

6. Type of Vessel:____

7. Country of Registration:____

8. Radio Call Sign:____

9. Fishing Vessel Registration Number:__________________________

10. Vessel Particulars:

  a. Year Launched __________________

  b. Length: __________________

  c. Breadth: __________________

  d. Depth: __________________

  e. Gross Tonnage: __________________

  f. Net Registered Tonnage: __________________

  g. Engine Horsepower: __________________

  h. Position Fixing Equip: __________________

  i. Authorized Crew Size: __________________

  j. Helicopter Registration Number: __________________

11. Description of Vessel Refrigeration:

  a. Storage Temperature: __________________

  b. Storage Capacity: __________________ short tons

12. Landing Place(s):____

13. Net length __________________ Net Depth __________________

Date:__________________

____
Signature or Seal of Applicant
or his Representative

APPENDIX C PURSE SEINE VESSEL - CATCH REPORT FOR ZONES OF AGREEMENT

VESSEL NAME ____________
COUNTRY OF REGISTRATION ____________
REGISTRATION NUMBER ____________
GROSS REGISTERED TONNAGE ____________

LICENSE/PERMIT NUMBER ____________
NAME OF CAPTAIN ____________
CAPTAIN'S SIGNATURE ____________

YEAR ________ MONTH ________

	NAME		YYMMDD
DEPARTURE FROM PORT		DATE	
ARRIVAL AT PORT		DATE	

NUMBER OF CREW	

DAY	NOON OR SET POSITION				SCHOOL TYPE	TIME SET	SKIPJACK		YELLOWFIN		OTHER SPECIES			COMMENTS	DISCARDS		
	LAT		LONG				CATCH (tonnes)	AV. SIZE (kg)	CATCH (tonnes)	AV. SIZE (kg)	SPECIES NAME	CATCH (tonnes)	AV. SIZE (kg)		TUNA (tonnes)	OTHERS (tonnes)	REASON FOR DISCARD
	DDMM	N S	DDDMM	E W													
					( )									( )			( )
					( )									( )			( )
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TOTAL											☒			☒			☒

SUMMARY OF SCHOOL TYPE, COMMENTS, AND REASON FOR DISCARD

SCHOOL TYPE

1 Log
2 Surface
3 Whale
4 Porpoise
5 Raft
6 Other

COMMENTS

1 A full day in transit between fishing grounds or to or from fishing grounds.
2 A full day when not fishing due to breakdown.
3 A full day when not fishing due to bad weather.
4 A full day when searching for fish but no sets made.
5 Part of day searching for fish but no sets made.
6 Set unsuccessful for any reason, e.g. fish dive, roll up.

REASON FOR DISCARD

1 Undesirable species
2 Fish too small
3 Vessel completely loaded
4 Other reason - please specify
....

APPENDIX D

1. For Actual Time of Entry
    - i Ent (entry)
    - ii Vessel name
    - iii Actual Position of Entry
    - iv Date of Entry (month-day-year)
    - v GMT of Entry
    - vi Total Catch on Board at Time of Entry

2. Weekly Reporting of Position and Catch
    - i WPCR (Weekly Position Catch Report)
    - ii Vessel Name
    - iii Date
    - iv Noon Position
    - v Total Catch of Previous Week

3. For Actual Time of Exit
    - i Ext (exit)
    - ii Vessel Name
    - iii Actual Position of Exit
    - iv Date of Exit
    - v GMT of Exit
    - vi Total Catch on Board
    - vii Total Catch since Last Report

AGREEMENT BETWEEN THE GOVERNMENTS OF NEW ZEALAND (IN RESPECT OF TOKELAU), NIUE, TUVALU AND WESTERN SAMOA AND THE AMERICAN TUNABOAT ASSOCIATION

The Governments of New Zealand (in respect of Tokelau), Niue, Tuvalu and Western Samoa (hereinafter referred to as the "Licensing Parties") and the American Tunaboat Association (hereinafter referred to as the "Association";

HAVE AGREED AS FOLLOWS:

1. The Licensing Parties shall permit fishing by Association member vessels within the area described in Appendix A (hereinafter referred to as the "Zones"), except in such areas as are designated in Appendix A as closed areas, in accordance with the provisions of this Agreement and applicable laws and regulations of the Licensing Parties.

2. The administering authority (hereinafter referred to as the "Administrator") acting on behalf of the Licensing Parties in administering the terms and conditions of this Agreement shall be a Licensing Party. The South Pacific Forum Fisheries Agency shall be the consultant to the Administrator. The Licensing Parties shall notify the Association of the Licensing Party serving as Administrator and any change in the Administrator.

3. Association member vessels shall not fish in the Zones except under the terms and conditions specified in this Agreement and in accordance with applicable laws and regulations. The Administrator shall provide the Association, within 30 days of the effective date of this Agreement, with copies of all such applicable laws and regulations and changes in applicable laws and regulations within 30 days of the effective date of such changes.

4. Each Association member vessel which engages in fishing in the Zones must have in its possession a Certificate of Access in the form set forth in Appendix B, or by virtue of Paragraph 5, a Certificate of Access number issued by the Administrator. The Association shall apply on behalf of its members for Certificates of Access on the form set forth in Appendix C. A true copy of the current certificate of ownership issued by the country of registration shall accompany this application and shall be accepted for the purpose of establishing the net registered tonnage of the applicant vessel.

5. The Administrator shall promptly review each application for a Certificate of Access, and issue a Certificate which shall

be valid to December 31, 1983 for the first year, and December 31, 1984 for the second year, upon payment of the fee as specified in Paragraph 7. The Administrator shall telex the number of the Certificate of Access to the Association as soon as it has been issued. Upon special request by the Association which shall report the current position of the vessel, the information required to complete Appendix B and include a commitment to pay the fee specified in Paragraph 7, the Administrator may immediately inform the Association of the number of the Certificate to be issued upon receipt of the application form and fee as specified in Paragraph 7. Payment of the fee described in Paragraph 7 shall be made to a bank account designated by the Licensing Parties within 30 days of the issuance of a Certificate of Access number. Failure to submit payment within the stipulated time will result in the cancellation of the Certificate of Access number which shall not affect the vessel's liability for payment of the fee. The Certificate of Access issued to a vessel pursuant to this Agreement, or a true copy thereof, shall be prominently displayed in its wheelhouse while fishing in the Zones. There shall be no transfer of Certificates of Access.

6. An applicant may begin fishing within the Zones upon the receipt of a Certificate of Access. Prior to the receipt of the Certificate of Access, the number issued by the Administrator shall be sufficient to permit fishing pursuant to this Agreement.

7. The Administrator shall issue Certificates of Access contingent upon the payment of a fee of U.S. $ 15 per net registered ton of vessel for the first 25 vessels applying in 1983 and U.S. $ 12 per net registered ton of vessel for each additional vessel applying for that year, and U.S $ 30 per net registered ton of vessel for the first 35 vessels applying for 1984 and U.S. $ 25 per net registered ton of vessel for each additional vessel applying for that year. In the event of substantial improvement in the market situation during the first year of this Agreement, the Licensing Parties and the Association shall agree to a correctional review of the fee schedule for the purpose of increasing the second year fee to reflect such improvement. For the year 1984, all member vessels of the Association fishing in the Central and Western Pacific (to wit: the area bounded on the west along the 170 degree East Longitude and on the east along the 160 degree West Longitude) shall apply for Certificates of Access and the Association shall be responsible for the collection and transmission of all fees to the Administrator. There will be no refund or pro-ration of fees.

8. After written notice and consultation with the Association and the Licensing Parties, the Administrator may take the following actions:

(a) Deny an application for a Certificate of Access to an Association member vessel. The reasons for such denial shall be provided in writing to the applicant, the Association and the Licensing

Parties. The applicant may re-apply.

(b) Cancel and withdraw the Certificate of Access of any Association member vessel which has committed acts in contravention of this Agreement. The effective date of such cancellation and withdrawal shall be no earlier than ten (10) days from the date of notification by telex from the Administrator. The Certificate holder or the Association may request a consultation to be held in accordance with Paragraph 23. The Association shall secure and promptly dispatch to the Association any such cancelled Certificate and all true copies thereof.

9. Catch reports for all reported and submitted data shall be completed and transmitted to the Administrator through the Association for all fishing within the Zones by Association member vessels as follows: for 1983 - September 30 and December 15; and for 1984 - May 31, September 30 and December 15. In addition a final catch report for each Agreement year shall be completed and transmitted to the Administrator through the Association when all data for that year are reported and submitted. The Association shall submit a list of all vessels holding Certificates of Access which conducted fishing operations within the Zones during the period and a separate list of such vessels which did not conduct fishing operations within the Zones during the period.

Consultations shall be held between the scientific consultant representing the Association and representatives of the Licensing Parties on a semi-annual basis for the purpose of reviewing the catch and effort data recorded by Association member vessels within the Zones. Such consultations shall endeavour to recommend measures to improve the data collection and reporting actions undertaken by masters of such vessels, taking into account the form set forth in Appendix D.

10. Masters of Association member vessels shall maintain a logbook on board the vessel to record the catch and effort data sufficient to enable the Association to comply with the terms of this Agreement. After proper identification is established, the Masters of such vessels shall make such logbooks available to officers authorised by the Licensing Parties.

11. The Licensing Parties, the Administrator and the Association shall ensure the confidential character of information, records or statistics pertaining to fishing by Association member vessels within the Zones. The Licensing Parties and the Association shall agree on the programme for the release of information required by the South Pacific Commission Tuna and Billfish Programme for the assessment of the regional resource.

12. Fishery activities by Association member vessels shall be conducted in a manner which will not disrupt traditional, and locally based fisheries, and all turtles and reef fish taken

during the course of the purse seine fishery shall be released in a manner which will provide this miscellaneous catch with the greatest chance for survival.

13. After proper identification is established, masters of Association member vessels shall allow any authorised enforcement officer to board and inspect their vessels at any time within the Zones in accordance with international law. Arrests and seizures shall not be made unless such officer has reasonable cause to believe as a result of such search or inspection that any such vessel or any person has committed an act in violation of this Agreement or applicable laws and regulations of the Licensing Parties as provided pursuant to Paragraph 3. Boarding and inspection shall be conducted expeditiously and with minimum interference to fishing operations and minimum risk to vessel or crew.

14. The Association shall make its best efforts to ensure that members shall respond to any legal process issued by a court of competent jurisdiction of the Licensing Parties.

15. The Association shall provide the following information to the Administrator by telex or cable:

(a) Notice of actual time of entry of an Association member vessel into the Zones; and

(b) Notice of exit of an Association member vessel from the Zones and notice of whether such vessel had fished during time spent in the Zones.

The Association shall make its best efforts to transmit to the Administrator the additional information contained in the form set forth in Appendix E.

16. Each vessel issued a Certificate of Access shall display the following identification marks:

(a) the radio call sign of the vessel shall be displayed in a prominent position on the vessel where it can readily be identified from the air or the sea; and

(b) the letters and numbers constituting the radio call sign shall be at least one metre high, clear and distinct and coloured black on white, white on black or similar contrasting colours.

17. Association vessels shall continuously monitor the international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) for the purpose of facilitating communication between such vessels and air and seaborne authorities of the Licensing Parties wishing to establish the credentials of a vessel in the Zones.

18. Association member vessels may utilise the legally designated ports within the Zones, subject to the availability of

facilities and supplies and the reqirements of the respective Licensing Parties, and in accordance with the laws and regulations applicable in such ports. The Licensing Parties shall seek to ensure that Association member vessels are granted the appropriate authorisation to enter legally designated ports within the Zones. Each Licensing Party shall, within 30 days from the date of notification by the Administrator to the Association that all Licensing Parties have approved this Agreement, notify the Association of the port entry procedures to be followed within its jurisdiction.

19. In case of seizure of an Association member vessel or the arrest of its crew, the relevant Licensing Party shall notify the Association of this action. The Licensing Party shall seek to ensure that a seized vessel and arrested crew members are promptly released subject to reasonable bond or other security as may be determined by the appropriate court.

20. Recognising the limited availability of statistical information on catch and fishing effort within the Zones, the Licensing Parties and the Association acknowledge the value and need of an effective scientific data programme. The Administrator shall propose programmes that will allow authorised scientific technicians to monitor fishing activities during the term of this Agreement by participating in up to a maximum of ten (10) voyages. The terms and conditions of such programmes shall be subject to approval by the Association and the Licensing Parties.

21. Adequate and complete insurance including, but not necessarily limited to, collision, protection and indemnity, and oil pollution liability insurance shall be maintained for Association member vessels fishing within the Zones.

22. The Licensing Parties and the Association shall encourage other states in the region to become parties to this Agreement. The Licensing Parties and the Association must both agree upon the additional fee per net registered ton of vessel per year for each state desiring to enter into this Agreement and shall amend this Agreement to take into account the change in the area of the Zones and the agreed increase in the fees to be paid per net registered ton per year.

23. Upon notification by the Administrator to the Association that all Licensing Parties have approved this Agreement, this Agreement shall apply from January 1, 1983 to December 31, 1984. At the written request of either the Administrator, a Licensing Party or the Association, on reasonable notice, consultations shall be held with respect to any problems which may arise while this Agreement is in force.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their principals, have signed this Agreement on the dates shown.

For the Government of New Zealand
(in respect of Tokelau)

Date: 26 Sept 1983

For the Government of Niue

Date: 30: 8: 1983

For the Government of Tuvalu

Date: 8 August 1983.

For the Government of Western Samoa

Date: 30/8/83.

August Felando

August Felando, President
American Tunaboat Association

Date: 14 August 83

TD A7

APPENDIX A

AGREEMENT AREA

The Area of this Agreement, excluding all applicable zones claimed in accordance with international law by states not party to this Agreement, shall be the area:

1. Between Latitude 4 degrees South and 6 degrees South From Longitude 172 degrees East to 178 degrees West
2. Between Latitude 6 degrees South and 10 degrees South From Longitude 172 degrees East to 168 degrees West
3. Between Latitude 10 degrees South and 14 degrees South From Longitude 177 degrees East to 168 degrees West
4. Between Latitude 14 degrees South to 16 degrees South From Longitude 175 degrees West to 168 degrees West
5. Between Latitude 16 degrees South and 24 degrees South From Longitude 172 degrees West to 164 degrees West.

CLOSED AREAS

The following areas are closed to fishing under the terms and conditions of this Agreement, but may be opened to limited fishing under separate arrangements between individual vessels and the Government responsible.

TOKELAU

1. Within 12 nautical miles of all island and reef baselines.
2. Twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Nukunonu and Faka'ofo.

NIUE

1. Within 12 nautical miles of all island and reef baselines.
2. On named bank areas in less than 40 fathoms.

TUVALU

1. Within 12 nautical miles of all island and reef baselines.
2. On named bank areas in less than 40 fathoms.

WESTERN SAMOA

1. Within 12 nautical miles of all island and reef baselines.
2. On named bank areas in less than 40 fathoms.

APPENDIX B

CERTIFICATE OF ACCESS

NUMBER ______________

1. This Certificate of Access is issued pursuant to the AGREEMENT BETWEEN NEW ZEALAND (IN RESPECT OF TOKELAU), NIUE, TUVALU AND WESTERN SAMOA AND THE AMERICAN TUNABOAT ASSOCIATION (hereinafter referred to as the "Access Agreement") and the MEMORANDUM OF UNDERSTANDING IN CONNECTION WITH A FISHERY ACCESS AGREEMENT WITH THE AMERICAN TUNABOAT ASSOCIATION.

2. The fishing vessel described hereunder is licensed to fish in the zones of Niue, Tokelau, Tuvalu and Western Samoa subject to applicable laws and regulations of the Licensing Parties, and the terms and conditions of the Access Agreement.

Name of Vessel ______________________________

National Registration Number ___________________

Radio Call Sign ____________________________

Name of Owner _____________________________

Name of Master ____________________________

3. Subject to applicable laws and regulations and the Access Agreement, this Certificate of Access is valid from January 1, 198_ through December 31, 198_.

5. This Certificate of Access is not transferable.

Issued this ____________ of 198_ at __________, ____________

____
Signature of Administrator

ENDORSEMENTS

APPENDIX C

APPLICATION FORM

I hereby apply for a Certificate of Access pursuant to the AGREEMENT BETWEEN THE GOVERNMENTS OF NEW ZEALAND (IN RESPECT OF TOKELAU), NIUE, TUVALU AND WESTERN SAMOA AND THE AMERICAN TUNABOAT ASSOCIATION.

1. Name of Vessel ______________________________
2. Name of Owner ______________________________
3. Address of Owner ______________________________
____
4. Name of Charterer ______________________________
5. Address of Charterer ______________________________
____
6. Country of Registration ______________________________
7. Country Registration Number ______________________________
Helicopter Registration Number ______________________________
8. Radio Call Sign ______________________________
9. Operational Base(s):
Port ____________ Country ____________
Port ____________ Country ____________
10. Name of Vessel Master ______________________________
11. Address of Vessel Master ______________________________
____
12. Name of Fishing Master ______________________________
13. Address of Fishing Master ______________________________
____

14. Type of Vessel

Single Purse Seiner ☐
Longliner ☐
Pole and Liner ☐
Other (Specify) ☐ ____________________

Group Purse Seiner ☐
Purse Seine Carrier ☐

15. Normal Total Number of Crew ______

16. Flag State Authorised Fishing Area ____________________________

17. Hull Materials: Steel ☐ Wood ☐
FRP ☐ Other ☐ (Specify) ________

18. Year Built 19__

19. Place of Construction ______________________

20. Gross Tonnage ________

21. Overall Length ___________ Meters

22. Main Engine(s) Power ________________(Specify Units)

23. Fuel Carrying Capacity _______ Kiloliters

24. Daily Freezing Capacity (More than one, if appropriate)

Method (X where appropriate)	Capacity Metric tons/day	Temperature C
Brine (NaCl) ☐BR	________	________
Brine (CaCl) ☐CB	________	________
Air (Blast) ☐BF	________	________
Air (Coils) ☐BC	________	________
Other(Specify) _______	________	________

25. Storage Capacity (More than one, if appropriate)

Method (X where appropriate)	Capacity Cubic Meters	Temperature C
Ice ☐IC	________	________
Refrigerated Sea Water ☐RW	________	________
Brine (NaCl) ☐BR	________	________
Brine (CaCl) ☐CB	________	________
Air (coils) ☐BC	________	________
Other(Specify) _______	________	________

==

Complete either A, B, or C below as appropriate.

A. For Purse Seiners

26. Net Length ________ Meters

27 Net Depth ________ Meters

28. Support vessels
Name ____________________ Type ________
Name ____________________ Type ________
Name ____________________ Type ________
Name ____________________ Type ________

B. For Pole and Line Vessels

29. Bait Storage (more than one, if appropriate)

Circulation Method (X Where appropriate)		Capacity Cubic Meters
Natural	☐NN	________
Circulation	☐CR	________
Refrigerated	☐RC	________

C. For Support Vessels

30. Activities (X more than one if appropriate)
Refrigerated Carrier ☐
Scouting Boat ☐
Anchor Boat ☐
Supply/Mothership ☐
Other(Specify) ☐ ____________________

31. Fishing Vessel(s) Supported ____________________
____

I understand, I am required to:
I. Report any changes in items 1 through 13 within 60 days, and
II. Annually notify any other changes in the information contained in this application.

I further understand that failure to comply with the above may affect standing on the Register.

Signature of Applicant ____________________
Owner☐ Charterer☐ Duly Authorised Agent ☐

Name of Applicant ____________________

Address of Applicant ____________________
____

APPENDIX D

A7

PURSE SEINE VESSEL - CATCH REPORT FOR WATERS OF ....

VESSEL NAME ______________________
COUNTRY OF REGISTRATION ______________________
REGISTRATION NUMBER ______________________
GROSS REGISTERED TONNAGE ______________________

YEAR ________ MONTH ________

LICENSE/PERMIT NUMBER ______________________
NAME OF CAPTAIN ______________________
CAPTAIN'S SIGNATURE ______________________

	NAME		YYMMDD
DEPARTURE FROM PORT		DATE	
ARRIVAL AT PORT		DATE	

NUMBER OF CREW

DAY	NOON OR SET POSITION				SCHOOL TYPE	TIME SET	SKIPJACK		YELLOWFIN		OTHER SPECIES			COMMENTS	DISCARDS		
	LAT		LONG														
	DDMM	N S	DDDMM	E W			CATCH (tonnes)	AV. SIZE (kg)	CATCH (tonnes)	AV. SIZE (kg)	SPECIES NAME	CATCH (tonnes)	AV. SIZE (kg)		TUNA (tonnes)	OTHERS (tonnes)	REASON FOR DISCARD
					( )									( )			( )
					( )									( )			( )
					( )									( )			( )
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					( )									( )			( )
TOTAL											☒			☒			☒

SUMMARY OF SCHOOL TYPE, COMMENTS, AND REASON FOR DISCARD
****

SCHOOL TYPE

1 Log
2 Surface
3 Whale
4 Porpoise
5 Raft
6 Other

COMMENTS

1 A full day in transit between fishing grounds or to or from fishing grounds.

2 A full day when not fishing due to breakdown.

3 A full day when not fishing due to bad weather.

4 A full day when searching for fish but no sets made.

5 Part of day searching for fish but no sets made.

6 Set unsuccessful for any reason, e.g. fish dive, roll up.

REASON FOR DISCARD

1 Undesirable species
2 Fish too small
3 Vessel completely loaded
4 Other reason - please specify

....

APPENDIX E

ENTRY, EXIT AND WEEKLY REPORTS

1. For Actual Time of Entry
    - (a) Entry (ENT)
    - (b) Vessel's Name
    - (c) Actual Position of Entry
    - (d) Date of Entry (Month-day-year)
    - (e) GMT of Entry
    - (f) Total Catch on Board at Time of Entry

2. Weekly Reporting of Position and Catch
    - (a) Weekly Position Catch Report (WPCR)
    - (b) Vessel's Name
    - (c) Date
    - (d) Noon Position
    - (e) Total Catch of Previous Week

3. For Actual Time of Exit
    - (a) Exit (EXT)
    - (b) Vessel's Name
    - (c) Actual Postion of Exit
    - (d) Date of Exit
    - (e) GMT of Exit
    - (f) Total Catch on Board
    - (g) Total Catch Since Last Report

MEMORANDUM OF UNDERSTANDING

This Memorandum shall serve to confirm certain understandings between the Licensing Parties and the Association concerning the implementation of the "AGREEMENT BETWEEN THE GOVERNMENTS OF NEW ZEALAND (IN RESPECT OF TOKELAU), NIUE, TUVALU AND WESTERN SAMOA AND THE AMERICAN TUNABOAT ASSOCIATION" (hereinafter referred to as the "Agreement").

1. The Association will make its best efforts to ensure 25 vessel applications for 1983, provided that the Administrator notifies the Association prior to September 30, 1983, that all Licensing Parties have approved the Agreement.

2. The Licensing Parties will, subject to the signing of a Memorandum of Understanding between Wallis and Futuna and the other Licensing Parties, allow Wallis and Futuna to join the Agreement according to the principles in Paragraph 22 with the following fee schedule for Certificates of Access:

a) If Wallis and Futuna joins the Agreement prior to September 30, 1983, the fees shall be U.S. $ 15 per net registered ton of vessel for all vessels applying for 1983.

b) If Wallis and Futuna joins the Agreement prior to January 1, 1984, the fees shall be U.S $ 30 per net registered ton of vessel for all vessels applying for 1984.

3. The Licensing Parties will, subject to the signing of a Memorandum of Understanding between the Licensing Parties and any other regional state, allow that regional state to join the Agreement according to the principles in Paragraph 22 with the following fee schedule for Certificates of Access, in lieu of any other agreement between the Licensing Parties and the Association:

a) For each additional regional state joining the Agreement prior to September 30, 1983, the fee will be increased by U.S. $ 2.50 per net registered ton of vessel for vessels applying for 1983 to a maximum total fee of U.S. $ 19 per net registered ton of vessel for vessels applying for 1983.

b) For each additional regional state joining the Agreement prior to January 1, 1984, the fee will be increased by U.S. $ 5 per net registered ton of vessel for vessels applying for 1984 to a maximum total fee of U.S. $ 40 per net registered ton of vessel for vessels applying for 1984.

4. The Agreement shall be conditional upon all Licensing Parties and the Association, by their signatures below, indicating their confirmation of these understandings.

For the Government of New Zealand
(in respect of Tokelau)
Date: 26 Sept 1983

For the Government of Niue
Date: 30 : 8 :1983

For the Government of Tuvalu
Date: 30/8/83

For the Government of Western Samoa
Date: 30/8/83

August Felando

August Felando, President
American Tunaboat Association
Date: 4 October 1983

Senator **Warner**. The Chair notes that representatives from the administration, the Marshalls and FSM are still here. This committee would appreciate it if those representatives would respond to such concerns as has been raised by these witnesses and perhaps by subsequent witnesses, and those responses should be in writing to the committee.[3]

Counselor, I remember well the Conference. Refresh my recollection, the whole idea of the 200-mile zone was started because of the anchovie up—200 miles off Equador, Peru and Chile. Isn't that right?

Mr. **Burney**. That's correct, South America, correct.

Senator **Warner**. I do recall that now.

Thank you for participating in this hearing.

Mr. **Burney**. Thank you.

Mr. **Walsh**. Thank you.

Senator **Warner**. We now have Sister Barbara Glendon, OSU, director, Micronesian Coalition National Council of the Churches of Christ, Committee for East Asia and the Pacific; New York, NY.

Sister, we welcome you and thank you for your patience.

STATEMENT OF SISTER BARBARA GLENDON, ON BEHALF OF THE FOCUS ON MICRONESIA COALITION

Sister **Glendon**. Thank you, Mr. Chairman, for the opportunity to appear before your committee today.

Since I have been asked to be brief, I will give a summary of my statement.

Senator **Warner**. Which in its entirety will be put into the record.

Sister **Glendon**. Thank you very much.

My name is Sister Barbara Glendon. I represent the Focus on Micronesia Coalition, an organization of U.S. religious groups both Protestant and Roman Catholic, and other U.S. citizens who share a common set of values which we would characterize as traditionally Judao-Christian.

Some of these same values are embodied in the U.S. Constitution, the Bill of Rights as well as the United Nations Trusteeship Agreement under which the United States has been administering the Islands of Micronesia since World War II.

The coalition was founded some 6 years ago when concerns were growing that the U.S. Government was ignoring some of the basic principles of the U.N. Trusteeship Agreement which it had accepted.

In my full statement, I outline the credentials of our membership, and particularly the executive board of the coalition. You will note considerable expertise on Micronesia and ongoing significant contacts with Micronesians.

However, we do not speak for Micronesians. We speak as U.S. citizens who desire to see that our Government satisfies the moral and ethical obligations it assumed before the international community under the U.N. Trusteeship Agreement.

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[3] Responses appear in the appendix.

Hence, today we bring you our concerns about the proposed Compact of Free Association and its subsidiary agreements and some suggestions on how to address our concerns.

However, before I go into an outline of our concerns, I would like to note that the subsidiary agreements are part and parcel of the compact. In fact, most of the major points of contention and controversy, as we have heard today, are contained not in the compact but in the subsidiary agreements. Yet, these agreements were not published as part of the joint resolution before this committee.

We would hope that each Senator would have a copy of these agreements before voting on the compact. To this end, we believe the resolution should be amended to include the subsidiary agreements so that they will be part of the discussion.

It is difficult to consider the compact and its subsidiary agreements apart from the historical context, and particularly the several years of negotiations which took place in the context of Micronesian total economic dependence on the United States and United States unbending insistance on certain strategic military rights.

Because of this, we have questioned how free and equal the negotiations really were. We believe that U. S. domination in Micronesia—although modified by the compact—will continue to limit self-government. And we regret that our Government is holding Micronesian political status hostage to U.S. strategic interests.

However, in this context, the people of the Marshall Islands and the Federated States of Micronesia did approve the compact. The need and desire of Micronesians for new political status is clear and, hence, the continue existence of the trusteeship would be counterproductive of its own goals.

Thus, we do support the approval of the compact with these two states, but also recognize that there are flaws in the document which we would like the U.S. Government to address and improve.

First, the section 177 subsidiary agreement appears to release the United States from any further responsibility for the lands affected by the U.S. testing program and for the health damages to the people.

While it is stated that damages may be requested in the future if provisions of the compact are shown to be, quote, "manifestly inadequate," unquote, there is no guarantee they will be granted.

All legal proceedings are to be terminated and no U.S. court shall have jurisdiction in this matter.

To place the still as yet unknown burden of our own testing program on the newly emerging government of the Marshall Islands is, we feel, an unjust shifting of responsibility.

Thus, the section 177 subsidiary agreement should be amended to provide for full U.S. responsibility for the radiation affects of the nuclear testing program past, present and in the yet unknown future.

Congress should also develop additional legislation to provide independent and ongoing epidemiological studies and other medical surveys to determine who may be in fact additional victims of the nuclear testing program.

Also, we believe Congress should address, in a more humane and just way, the needs of the persons still displaced 37 years after the testing.

Second, the compact has a term of 15 years. The subsidiary agreements relating to defense and military land use extend 30 years, and indefinitely in the case of denial rights.

Because these provisions outlive the term of the compact itself, we believe they seriously undercut the possibility of a fully free active self-determination by the Micronesians at the end of the compact's term.

Thus, we ask that the compact and all of its subsidiary agreements be amended to provide for a uniform term of expiration, not more than 15 years.

And third, the fact of economic dependency in Micronesia cannot be denied, it is widespread, structural and totally engrained.

Clearly, the obligation of the United States under the U.N. Trusteeship to promote economic development in Micronesia has not been fulfilled.

The economic provisions of the compact need close scrutiny to determine if the long-term interests of the Micronesians will be enhanced and the process of dependency reversed.

Economic development alternatives, such as those offered by the InterAmerican Foundation, churches, and non-governmental organizations should be considered.

Provision for independent monitoring of the implementation of development plans by persons with third-world island economy background and experience should be provided.

A few other concerns, although not dealt with directly by the present compact, need to be mentioned.

First, the situation at Kwajalein regarding the relations with the local Marshallese have been described as apartheid-like. Some may think this is too-strong language, but improvements are in order.

We ask that this committee and the Senate to use its influence to change those policies of the Department of Defense and its civilian contractors which create the impression.

One suggestion might be to open the high school on Kwajalein to Marshallese students from Ebeye.

Second, the U.S. share of World War II of Micronesian war crimes should be paid.

We fail to see the continued—fail to see that continued linkage to Japanese payment serves any purpose.

And finally, the Nation of Palau is mentioned only briefly in the resolution since the Palauans have not yet approved the compact.

We have strong feelings regarding the conduct of U.S.-Palauans negotiations and respect for their constitution. The Palauans have consistently voted on four different occasions to support the nuclear-free provision of their constitution. The United States has consistently refused to accept the Palauans stance as compatible with the political status of free association.

We frankly do not believe the peace and security of the Pacific region hangs on U.S. defense rights including nuclear rights in Palau.

We ask Congress to monitor more closely the ongoing negotiations of the United States with Palau.

The Office for Micronesian Status Negotiations should drop the demand that Palau override the nuclear-free clause of their constitution in order to have a relationship of free association with the United States.

A careful review should be made to determine what pressures, economic or otherwise, are being used to bring Palauan capitulation to United States demand.

In summary, we urge that serious consideration be given promptly in the Senate to ways we have suggested to improve the compact's terms. With these amendments and parallel actions, we support the approval of the compact of free association and subsidiary agreements with the Marshall Islands and the Federated States of Micronesia.

I thank you, Mr. Chairman, for the opportunity to speak before you today. I would be happy to answer questions which the committee members may wish to ask. If time doesn't permit at this time, then perhaps they could be asked, and we would answer them for the record.

[The prepared statement of Sister Glendon follows:]

STATEMENT OF THE FOCUS ON MICRONESIA COALITION BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES REGARDING JOINT RESOLUTION 286 ON THE COMPACT OF FREE ASSOCIATION AND ITS SUBSIDIARY AGREEMENTS

MAY 24, 1984

Thank you, Mr. Chairman, for the opportunity to appear before you committee today. I represent the Focus on Micronesia Coalition and have been the Staff Consultant for four years. The Coalition is an organization of United States religious groups, both Roman Catholic and Protestant, as well as individuals with academic and professional credentials. In my role I have maintained contacts with the people of Micronesia both in Micronesia and in this country. I have conferred formally and informally with Micronesian and US officials dealing with the administration of the Trust Territory, as well as with non-governmental groups concerned about Micronesia. I have had the opportunity to make fact-finding trips to Micronesia, one of seven weeks and one of three weeks' duration, most recently in January of this year. To give you some idea of the expertise we bring to the hearings today, I would like to introduce the other members of our executive board.

Dr. William Alexander, Associate Professor of Anthropology, and Assistant Dean at Upsala College. Dr. Alexander lived on Ebeye, and since 1975 has done extensive research regarding the impact of the Kwajalein Missile Range on the people of the Marshall Islands.

Reverend William T. Wood of the Society of Jesus. In his capacity as Director of Missions for the New York Province of Jesuits, Fr. Wood is in close contact with Jesuits in all parts of Micronesia. He has made numerous visits to the islands for extensive discussions about the life of the people there and the influence of the American presence.

Reverend Edwin Luidens, Director of the Office for East Asia and the

Pacific in the National Council of Churches of Christ in the USA. In his position, Reverend Luidens acts as a liason with the Pacific Conference of Churches, and has travelled in the Pacific annually since 1976 for consultations with Church and government officials. His most recent trip to Micronesia was in April of this year.

Reverend Dr. Michael Hahm, Executive Secretary for the Pacific, World Board of Global Ministries, the United Methodist Church. Although the United Methodist Church has not been directly involved in Micronesia, its Board of Global Ministries has sponsored an intern program in the Pacific including Micronesia.

Dr. Patricia Rumer, Oceania Secretary for the United Church Board of World Ministries, United Church of Christ. The United Church of Christ is the main Protestant denomination in Micronesia. The United Church Board of World Ministries has close and longstanding ties with the indigenous church and the Micronesian people which are now administered by Dr. Rumer.

In addition, many of the constituents of the Coalition are people who have lived and worked in Micronesia.

While our direct relationships with Micronesians inform our activities, the Coalition does not speak for the people of Micronesia, but rather as citizens of the United States. The Coalition intends to do what it can to ensure that the US government satisfies the moral and ethical obligations it assumed under the United Nations Trusteeship Agreement.

Although the American churches have had fellowship with the Micronesians for many years, the Coalition was founded only six years ago when concern was growing that the government of the US was ignoring some of the basic principles of the United Nations Trusteeship Agreement which it had accepted, and which we also espouse as representatives of church groups, as members of the international community, and as American citizens. We have brought these concerns to the attention of responsible government officials, both in the executive and legislative branches and before the United Nations Trusteeship Council on several occasions, most recently last week.

Now that the Compact of Free Association has been introduced into Congress we appreciate the opportunity to bring our serious concerns before you. The Strategic Trust Territory of the Pacific Islands was created, in part, to aid in bringing the Micronesians to self-government or independence. At this time, the need and desire of the Micronesians for a new political status is generally recognized. The right to determine freely the nature of this political status is a privileged one and we strongly support it. The Compact of Free Association has been negotiated with the US Government and approved by the Marshall Islands and the Federated States of Micronesia. Hence for the Marshallese and the people of the Federated States, we believe the continued existence of the Trusteeship will be counter-productive of its own goals. Thus we support the approval of the Compact agreement with those two states while suggesting ways in which the American government needs to offer improvements.

While affirming the choice expressed by the Micronesians in the Marshalls and the Federated States, we are aware that our government has brought undue pressure of different types into the negotiations. Certain items have been non-negotiable from the start and remained so. We question how free the negotiations really were. The understandable desire of the Marshall Islands and the Federated States' governments to end the Trusteeship and the unwillingness of the US to release control in certain areas have produced, in our opinion, a flawed document. We believe that US domination in Micronesia, although modified by the Compact, will continue to limit self-government. We regret that our government is holding the Micronesian political status hostage to US strategic interests.

In particular, the Section 177 agreement with the Marshall Islands is, we believe, deficient. It appears to release the United States from any further responsibility for the lands affected by the nuclear testing program and for the health damages to the people, except for the assistance outlined in the Compact. While it is stated that damages may be requested at some time in the future if the provisions of the Compact are shown to be "manifestly inadequate", there is no guarantee they will be granted. In fact, the agreement is to constitute "full settlement of all claims, past, present and future." All legal proceedings are to be terminated, and no US court shall have jurisdiction to entertain such claims. We feel that to place on a newly emerging nation's government the still as yet unknown burden of dealing with the full effects of the US nuclear testing program is an unjust shifting of responsibility. We ask Congress to amend the section of the Compact and /or the Section 177 subsidiary agreement to provide for full American responsibility for the radiation effects of the nuclear testing program: past, present, and future. Congress also should develop additional legislation to provide independent and on-going epidemiology studies and other medical surveys to determine who may be additional victims of the nuclear testing program. Congress also should address the needs of persons displaced as a result of nuclear testing in a more humane way.

Secondly, as you know, the defense and military land use provisions extend beyond the length of the Compact of Free Association. The US has an option for the use of Kwajalein for 30 years. The US can extend indefinitely its right to foreclose access to the Marshall Islands and Federated States to third countries for military purposes. US military presence and denial rights make impossible a neutral stance by the Micronesians in the world community. They are already drawn into the East-West cold war and will probably become an early target in a potential "hot" war. The military provisions of the Compact will continue these conditions. Because these provisions outlive the term of the Compact, we believe they seriously undercut the possibility of a fully free act of self-determination by the Micronesians at the end of the Compact's term. Thus we ask that the Compact and all of its subsidiary agreements be amended to provide for a uniform term of expiration, not more than 15 years.

Thirdly, even now the presence of the US missile testing base on Kwajalein already has created an apartheid-like situation. The indigenous inhabitants of Kwajalein have been moved off their island onto the nearby island of Ebeye which is characterized by its slum-like conditions. The islanders have little access to the educational, health, water and food supplies of Kwajalein. Congress should use its influence to change the apartheid-like policies of the Department of Defense and its civilian contractors on Kwajalein. One suggestion might be to open the high school on Kwajalein to Marshallese students. The school could be jointly operated with the Ebeye school district.

A fourth area of concern is economic and human development. Prior to colonial rule in Micronesia, the islands were self-sufficient and a brisk inter-island trade system was operating. The human skills necessary to maintain this lifestyle were passed on from generation to generation.

Under US administration, Micronesian economic dependency on the US has become widespread, structural, and totally engrained. Human development has been geared to the maintenance of a political bureaucracy. The Micronesians themselves believe there were "decisions made by the US administration that were inconsistent with or worked at cross purposes with the avowed US obligations under the Trusteeship, particularly the obligation to promote self-sufficiency." One such decision was the US prohibition on foreign investment in the Trust Territory, which was in effect until 1974. Whether this skewed development was intentional or not is a matter of controversy. However, the fact is, effective help toward economic independence has not been forthcoming. Clearly, the obligation of the US under the UN Trusteeship to promote economic development in Micronesia has not been fulfilled. Furthermore, the fact of economic dependency has been one element in skewing the Compact negotiations in favor of perceived US interests.

The economic provisions need close scrutiny to determine whose long-term interests they will be serving, and whether the development provided for in the Compact will reverse the process of dependency so that the Micronesians can contemplate more freely a choice between political independence and Free Association when the Compact is renegotiated.

The Compact provides that development be guided by the local governments and paid for by the US. Development is a priority for the islands given the high level of economic dependency on the US and the islands' geography. Economic development alternatives such as those offered by the Inter-American Foundation, Churches and non-governmental organizations should be considered. Provision for independent monitoring of the implementation of development plans by persons with Third World Island economy background and experience should be provided.

In summary, we urge that serious consideration be given promptly in the Senate to the ways we have suggested to improve the Compact's term. With these amendments and parallel actions we support the approval of the Compact with the Marshalls and the FSM by Congress.

Although the present legislation before Congress on the Compact does not apply to Palau, we wish to speak briefly on some of the issues involved in US-Palau relations. The placing of US interests above Micronesian interests, contrary to US obligations under the Trusteeship is most clearly seen in Palau. The Palauans have consistently voted, on four different occasions, to support a nuclear-free provision in their Constitution. The US has consistently refused to accept their stance as compatible with the political status of free association. We frankly do not believe the peace and security of the Pacific region hangs on US nuclear rights in Palau. Nuclear-free zones respected by nuclear powers have precedent in international law. They should be encouraged as a means to defend not only against Palau's annihilation, but also our own. The proposed military installation on Palau may be more provocative than preventative. US military bases, ports of R & R and places of joint military exercises bring a host of problems to the local area and its inhabitants, problems most Palauans want to do without.

Finally, in light of this, it is unconscionable that the US negotiating position remains unchanged. Under the Trusteeship the US can do anything it desires militarily. Also, due to the economic dependency created, the US significantly controls the Palau purse strings. The US can bring enormous pressure to bear on the Palauans to break their nuclear-free resolve by waiting them out and holding back money, or by threatening to go ahead anyway with their military plans under the Trusteeship. These would be morally reprehensible steps.

Congress should monitor more closely the on-going negotiations of the US with Palau. The Office for Micronesian Status Negotiations should drop the demand that Palau override the nuclear-free clause of their Constitution in order to have a relationship of free association with the US. Careful review should be given to what pressures, economic or otherwise, are being used to bring Palauan capitulation to US demands.

As we have spoken it must be clear that the Compact cannot be separated from its subsidiary agreements. They are part and parcel of the envisioned future relationship. In fact, most of the major points of contention and controversy are contained not in the Compact proper, but in the subsidiary agreements. Thus we are dismayed to see that they were not considered part of the joint resolution. We believe the resolution should be amended to include the subsidiary agreements. The Micronesians voted on the whole package, the US Congress should do likewise. Certainly each Senator should have a copy of the subsidiary agreements.

In conclusion, it is a sad truth that the US has not paid its share of World War II Micronesian claims. Can't we just simply pay, and drop the linkage with Japan's payment?

These concerns we have presented today grow out of the Coalition members' belief in Judeo-Christian principles, some of which are embodied in the US Constitution and Bill of Rights and the UN Trusteeship Agreement. We hope that these principles affirmed by Americans for their own domestic life also would characterize dealings with other peoples, in this case with the Micronesians.

Thank you, Mr. Chairman, for the opportunity to speak before your committee. We would be happy to answer questions which committee members may wish to ask.

Senator **Warner**. I thank you for your cooperation and your interest in this subject. Your testimony is a very valuable contribution.

In the interest of time, we will not have questions. I have been informed by counsel this hearing has been underway for some period of time. I will try as best I can to swiftly conclude the hearing, but I don't want to unduly importune anyone. We are not able to get another chairman, so I will cancel my schedule for the convenience of the folks that are here.

Now, Rev. John T. Pawlikowski. Father.

STATEMENT OF REV. JOHN T. PAWLIKOWSKI, OSM, PH.D., PROFESSOR OF SOCIAL ETHICS, CATHOLIC THEOLOGICAL UNION, CHICAGO, IL

Father **Pawlikowski**. Mr. Chairman, my name is Father John Pawlikowski. I am a member of the Servite Religious Order and professor of social ethics at the Catholic Theological Union, a constituent school of the Chicago Cluster of Theological Schools at the University of Chicago.

Over the past several years, I have closely followed the Micronesian-United States relations through a personal visit to that area and regular contact with the Roman Catholic diocese that covers the region as well as its affiliate organization, the Micronesian Seminar.

I have done consultation work on Micronesia for the U.S. Catholic Conference and was instrumental in the establishment of an American support body for Micronesia, called the Micronesia Institute.

The institute is a coalition of persons from various religious, medical, educational, business and cultural institutions whose purpose is to assist Micronesians in self-development projects.

It is based here in Washington with Patricia Luce Chapman serving as its present chairperson. I currently serve as secretary/treasurer of the Institute.

The first point I wish to emphasize is my firm conviction that we owe——

Senator **Warner**. Father, if I might suggest, that it is not useful just to read a statement which I can read and everybody else can read, I would urge that you just say: Now, Senator, my statement is in the record, here are the points which I wish to impress upon you.

Father **Pawlikowski**. All right. I will comply with that.

My first point is that I think we owe it to the people not only of the Micronesian states related to the compact, but also to the people of the Commonwealth of the Northern Marianas who are still waiting the full legal implementation of their Commonwealth agreement; that we move as swiftly as possible on this.

As many speakers have noted, this sort of document never satisfies everyone, not every provision satisfies me; for example, I have never been particularly enamored with the permanent denial clause.

However, because I think our security in that region relies more on a development of ongoing trust between the United States and each of the Micronesian entities, but I think overall I can speak in favor of the compact because I do think it satisfies both American strategic needs and also begins the process, I think a necessary process of allowing the Micronesian people to move to a process of self-management of their affairs. That for me is a very important idea.

I think for too long they have been simply at the very end of a long line of American programs and have not had very much input into the shaping of those programs. And so I think that this sort of thing is one of the most crucial dimensions of the compact.

I do think that what we need to do, as I say, is to—since I support the compact, is to move as swiftly as possible to its implementation as a result of the passage of the legislation here in the Senate and of the House.

I would like to say that I think we need to be aware, however, that the mere passage of the legislation does not end the relationship. I would like to stress that.

I believe it is your responsibility in Congress to continue to monitor this relationship—obviously not on a day-to-day basis, but to make sure that the essential provisions of the compact are indeed being fulfilled from the United States' side.

I have suggested in my written testimony that perhaps a hearing could be held once every 3 years during the initial period. Oftentimes these sorts of hearings can focus the concerns in a way that a general provision which says "well, you can come to us whenever you have problems" sometimes doesn't focus the hearing. So I'm just suggesting that.

Now, some of the areas that I believe are very important for us to monitor is, I think we need to be very vigilant about U.S. military activity under the compact. I think our primary goal should be to keep the region free of hostile forces.

Though we are dealing with a large geographic area—that is, if you superimposed Micronesia on a map of the United States, it's almost the same; however, the actual land mass area is infinitesimal. And I think we have to be very careful about the expansion of any military operations on the ground in the area.

Second, I think we do have to be very concerned about the providing continued—the financial aid and also continued access to U.S. medical facilities for those people who were harmed, and harmed very seriously by our atomic testing.

I think we must also try to help in an area that I don't believe anyone has mentioned thus far, that is, the area of cultural preservation. This is an area where it may not be the most important area, but I think it's an area that was particularly highlighted during the visit of the chairpersons of Micronesia institutes vist there last year, that there are ways I think in which the Micronesian culture and culture artifacts need to be preserved and they simply lack the talent. And it may be possible to provide help in that.

And finally, I think I would make the very important point that the Micronesian economy, it seems to me, must be allowed to develop in ways that's related to its immediate geographic area. And so that the dependency of the Micronesian economy on the United States—which certainly has been excessive—needs to be broken in ways that certainly do not impoverish Micronesia, but I think this needs to be a cooperative spirit here so that at the end of the 15-year period the peoples of the FSM and the peoples of the Marshalls are in a position to truly make a free choice as to whether they want continued relationship with the United States or are now prepared to take the step of full independence.

And I think the continued excessive economic dependence will only make that sort of decision—will make that sort of decision very, very difficult.

As Brother Huge Schwalbenberg of the Micronesian seminar, who has written extensively on Micronesian problems, has warned that particularly in the Marshalls and he also includes Palau in this, he says that if we are not careful it may be, "both of these could eventually become permanent wards under U.S. sovereignty".

And so I think we have to monitor—you have to monitor, as Members of Congress, the implementation of the economic relationship very carefully over the next 15 years. So that's what I would urge.

An important point, as I say, I firmly and strongly support the compact, but I think the monitoring role of Congress should not be seen as ending now, but as one that must continue to make sure that we've allowed the option of—a full range of political options for the Federated States and the Marshalls in 15 years.

Thank you.

[The prepared statement of Father Pawlikowski follows:]

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Members of the Senate. My name is Father John T. Pawlikowski. I am a member of the Servite Religious Order and Professor of Social Ethics at the Catholic Theological Union, a constituent school of the Chicago Cluster of Theological Schools at the University of Chicago. Over the past several years I have closely followed Micronesian-U.S. relations through a personal visit to that area and regular contact with the Roman Catholic diocese that covers the region as well as its affiliate organization the Micronesian Seminar. I have done consultation work on Micronesia for the United States Catholic Conference and was instrumental in the establishment of an American support body for Micronesia called The Micronesia Institute. The Institute is a coalition of persons from various religious, medical, educational, business and cultural institutions whose purpose is to assist Micronesians in self-development projects. It is based here in Washington with Patricia Luce Chapman serving as its present Chairperson. I offer testimony today in my capacity as Secretary/Treasurer of The Institute.

The first point I wish to emphasize is my firm conviction that we owe it to the peoples of the Marshall Islands and the Federated States, as well as to the peoples of the Northern Marianas who have waited so patiently for the full implementation of their Commonwealth status, to speed up the review process in Congress and bring this legislation to a vote before the close of the current session. Certainly the Compact does not satisfy any of us in every detail. No document of this kind could, for it had to meet the interests of multiple groups in

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this country as well as in the affected Micronesian entities. I myself, for example, have never especially favored the inclusion of a permanent denial clause in the Compact since I feel our security interests in that part of the Pacific will be best protected by the development of a relationship of mutual trust with the Micronesian states. But we could all raise this or that objection. Overall I strongly believe that the Compact, as a result of the lengthy negotiations carried on by several Republican and Democratic administrations, represents a constructive response to U.S. strategic interests as well as the development needs of the Micronesian peoples within a context of self-management. Additionally, as a firm adherent to the principle of self-determination that is so central to our own American democratic tradition, the significant support shown for the Compact by the voters of the Marshall Islands and the FSM is of great significance in my support of this legislation.

A January 1984 memorandum from the Micronesian Seminar written by Bro. Henry M. Schwalbenberg of the Jesuit Order makes this point relative to the FSM vote. He writes:

> "The plebiscite on the Compact of Free Association was an exercise in nation building for the young Federated States of Micronesia. The voting demonstrated the fragile unity of the young federation, the resentment engendered by yielding elements of sovereignty to foreigners, and the extent certain factions would go in pursuit of self-aggrandizement. But by the same token the voting demonstrated the

> strength of the Federation. It continues undiminished. It also evidenced the willingness to compromise and cooperate with outsiders. In a sacred trust the Micronesians have yielded their security concerns to the Americans. And the voting exhibited the unselfish and idealistic hopes of a people.... (#10, p.24)

I therefore strongly urge your prompt approval of the Compact legislation. While you certainly have the obligation to thoroughly examine the Compact I believe you should focus on the larger questions rather than unnecessarily delay the review process by becoming deeply entangled in a host of specfic details that are the fruit of the careful integration of a variety of viewpoints over the more than a decade of negotiations.

The role of Congress with respect to the Compact, let me emphasize, should not end with its ratification. Together with interested citizens' groups such as The Micronesia Institute Congress should monitor the ongoing implementation of the Compact by our government. You might even consider setting up a periodic review process, say every three years, during the initial life span of the Compact.

There are several dimensions of the Free Association relationship that we should watch closely over the next fifteen years. First of all, we need to be especially vigilent about U.S. military activity under the Compact. Our primary goal should be to keep the region free of hostile forces. But, given the small amount of land mass available to our Compact partners, we should be very hesitant about expanding our military operations on the ground in the area.

Secondly, we must ensure that the people directly affected by our atomic testing in the Marshalls in the past receive the funds provided under agreements related to the Compact for their medical and social needs. We should likewise continue to keep available relevant U.S. medical facilities for their ongoing treatment.

Another area where the U.S. might be of special assistance is cultural preservation. Along with the medical the area of cultural preservation surfaced as important concerns during our Chairperson's extended visit to Micronesia last year.

Finally, we must allow the Micronesian economy to develop in ways that will relate it to its immediate geographic situation and not continue the excessive dependence on the U.S. economy. This is extremely crucial so that when the Compact comes up for renegotiation the FSM and the Marshalls may be in a position to freely decide whether they wish full independence or some continued relationship with the United States. Excessive economic dependence on the U.S. would make independence a very difficult choice.

We need to heed the warning issued by Bro. Schwalbenberg in another Micronesian Seminar memo:

> The continuation of such overt Micronesian dependence on the United States, as in the current state of affairs, is, by importing a base consumerist gospel,destructive of religious and cultural values. Preferable would be a locally

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> productive economy even if it would entail some decline in material living standards. (#11, January 1984, p. 14)

Schwalbenberg than adds his concern that there exists a potential danger that the Marshalls and Palau (not part of the current legislation before the Senate) "may eventually become permanent wards under U.S. sovereignty" unless we watch the situation very closely.

The peoples of the Marshalls and the FSM have spoken out at the polls. They wish to establish a new temporary relationship with the United States that will greatly enhance their sovereignty and the process of their national self-development. While leaving our permanent relationship with them an open question let us respond to their present expression of trust in our country's ability to aid their process of nation building by approving the Compact. It is a course of action I urge upon the Senate with the full strength of my being.

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Senator WARNER. That's a very effective presentation, I thank you for that.

We will have Mr. Glen Alcalay, U.S. Pacific Network, from Washington, DC.

STATEMENT OF GLENN H. ALCALAY, SCIENTIFIC CONSULTANT TO THE UNITED STATES PACIFIC NETWORK

Mr. ALCALAY. Thank you, Mr. Chairman.

I would first like to ask the formal inclusion of my written testimony into the record and that of our delegation, specifically Mr. Roger Clark and others who could not be here today.

Senator WARNER. Without objection.

Mr. ALCALAY. Thank you. My name is Glenn Alcalay. I am a former Peace Corps volunteer on Uterik Atoll. I lived for 27 months amongst irradiated downwind victims from Bikini. This was in the mid-70's. Since then I have been working on a Ph.D. in medical anthropology where I am looking into the medical effects and the socio-cultural effects of nuclear testing in the Marshall Islands.

I went back to the Marshalls in 1981 to interview 100 affected downwind victims in Rongelap, Uterik, and at Ebeye, in Majuro and Wotje.

I appeared before this committee in 1977 on a Trust Territories Omnibus bill to provide compassionate payments to the people of Rongelap and Uterik for their exposure.

I, today, represent the United States Pacific Network, and our network is quite concerned about section 177 in the compact, specifically those sections dealing with the espousal of claims as well as the $3 million that is earmarked for an independent assessment of radiation.

Our network would urge this committee to—if at all possible—release these $3 million at the present time rather than wait for the compact process to proceed. It may be an indefinite period until the compact clears all of the obstacles ahead and finally passes the Security Council at the United Nations.

It's our contention that this $3 million is urgently needed at the present time to afford the Marshallese a truly independent, nongovernmental third-party assessment of islands and atolls irradiated from nuclear testing.

I would draw the committee's attention to a 1978 Department of Energy report. This report is dated August 22, 1978. It's called the Radiological Survey Plan for the Northern Marshall Islands. A quite interesting part of this report has to do with the fact that it has named and identified 14 atolls and islands in the Northern Marshall Islands that have been affected by intermediate range fallout from one or more of the many thermonuclear tests and atomic tests that they did in the Marshalls.

Interestinging enough, of the 14 names atolls and islands, many of which were inhabited, only two of these, Rongelap and Utirik have been provided with followup medical care. It's an enigma to our network why the other populations so named in this DOE survey have not been included for followup medical care; that is, islanders who have been put at high risk in radiation terms have not been followed up. We fail to see the logic in that.

Moreover, it should be mentioned and brought to the attention of this committee that it was only the Northern Marshall Islands by virtue of a 1977 lawsuit filed on behalf of the Bikini Islanders in Federal court that coerced and forced the United States finally—after much cajolling in the aftermath of the nuclear tests—to survey the Northern Marshall Islands. To date, none of the Southern Marshall atolls have been examined.

Having said that, it is reasonable then to go on and state that last September 7, during the Marshall Islands plebiscite, when the Marshall Islanders entered their polling place and voted on this historic document, it is fair to say that they voted with insufficient information about radiation contamination, especially in the southern atolls which have never been surveyed, and have been inverted with insufficient information about the long-term effects of radiation.

There have been two or three booklets produced for educational purposes for the Marshallese, bilingual booklets, "The Meaning of Radiation at Bikini"; the "Meaning of Radiation at Enewetak" and the "Northern Marshall Islands". All three of these booklets have been produced by agencies within the U.S. Government that permit nuclear weapons; that is, Lawrence Livermore Labs, Brookhaven, and other weapons laboratories.

To date, no truly independent assessments or educational program has been given to these islanders. And, again I wish to reiterate that it's our contention that the plebiscite was voted on by an electorate having insufficient and full accounting of radiation damange in the islands.

There is another section in 177 that specifies that all of the moneys for the four atolls in the section can be used only for U.S. agencies and Public Health Service agencies.

We wish to urge this committee based upon our interviews with many, many affected islanders in the Marshalls that it has been their wish for years and decades to contract with other agencies in other countries; for example, Japanese doctors at Hiroshima and Nagasaki have been sought—in fact were brought out in 1972 and did not make it to Rongelap and Utirik because of so-called visa problems.

The Marshallese whom we have spoken with have requested radiation scientists from Great Britain, Australia, New Zealand, the United States, Canada, as well as the World Health Organization. To date, no truly independent doctors have been in the Marshalls, and we would like to see the wording in the language changed in section 177 so that the Marshallese will be able to choose doctors of their own choice and radiation scientists of their own choice.

I mentioned the espousal of claims. It's ironic that many of my Micronesian friends tell me that it was the United States itself that taught the Marshallese about democratic principles, constitutional rights, and due process of law.

For the last 1½ years I have been working in Washington as a lobbiest on behalf of what are known as the atomic veterans. These are the veterans who were exposed to nuclear testing, the 250,000 of them. They are barred from suing the U.S. Government by what is known as the Farris Doctrine, which is the single exception to the Federal Tort Claims Act.

We consider the espousal clause in section 177 to be as undemocratic and as unconstitutional as the Farris Doctrine is for the atomic veterans.

Finally, we are asking that a full investigation be made of the recent leprosy and tuberculosis epidemic in the FSM, Federated States of Micronesia.

Finally, we wish to support the people of the Republic of Palau who, four times now, have voted down the nuclear asspect of the compact, that is section 314, and we go on record as supporting the rights of these people and endorse their vote.

That's all I have for you today, Senator.

[The prepared statement of Mr. Alcalay and attachments follow:]

STATEMENT OF GLENN H. ALCALAY
SCIENTIFIC CONSULTANT TO THE
UNITED STATES PACIFIC NETWORK

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to articulate some concerns of the United States Pacific Network regarding the peoples of the Marshall Islands and the Federated States of Micronesia in relation to the Compact of Free Association. As a former Peace Corps volunteer in the Marshalls (1975-77), and having conducted anthropological research on the Marshalls for the past several years, I realize that this is both an exciting and precarious time for these island nations as they near the termination date of the United Nations Trusteeship. In the same spirit with which I served as a Peace Corps volunteer on Utirik Atoll, and as one who has followed the events in Micronesia very scrupulously for the past nine years, I shall, in the following paragraphs, offer comments which I truly hope will be of benefit for our friends in Micronesia.

SECTION 177 OF THE COMPACT OF FREE ASSOCIATION

Section 177 of the Compact of Free Association deals specifically with radiation problems in the Marshall Islands. In the following paragraphs, I shall delineate the concerns of the United States Pacific Network about Section 177 and why we believe that if approved and implemented, the Compact of Free Association will leave the Marshall Islanders affected by nuclear testing in a rather vulnerable position with an indefinite prognosis for the years and decades ahead. Our Network feels that Section 177 makes a mockery of the Articles of the United Nations Charter which pertain to the United States' pledge to protect and insure the health and well-being, as well as the protection of land, of the inhabitants of the Trust Territory of the Pacific Islands.

Two years ago, Mr. Gene Curbow, the former commander of the Air Force weather station on Rongerik Atoll during the infamous 1954 "Bravo" thermonuclear explosion at Bikini in the Marshall Islands, revealed a startling revelation to a _New York Times_ reporter. "Bravo," as you may remember, contaminated numerous downwind atolls from Bikini, including the Japanese fishing trawler "Lucky Dragon," and remains the largest and dirtiest hydrogen bomb the United States has detonated. As chief of the weather unit at Rongerik, some 135 miles due east of Bikini, Mr. Curbow told the _New York Times_ reporter about the winds which headed directly from Bikini to Rongerik before, during, and after the "Bravo" explosion. According to Mr. Curbow, there were no "shifts" in the wind direction after "Bravo," and to this day Mr. Curbow and his many colleagues on Rongerik cannot explain why the Joint Task Force at that time proceeded with the "Bravo" test despite an alarming wind report.

Just recently, the Defense Nuclear Agency (of the Defense Department) released a report about the 1954 "Bravo" test. For the first time, the United States Government has admitted in the official record that indeed, just six hours prior to

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* _The New York Times_, September 20, 1982, page B15.

the detonation of "Bravo," the winds were heading in an easterly direction from Bikini to Rongelap.* It boggles the mind to try to understand the rationale behind the decision to proceed with the "Bravo" test when it was known that several inhabited atolls downwind of Bikini would be caught in the possible fallout from this monstrous thermonuclear weapon which was more than 1,000 times the size of the Hiroshima atomic bomb.

Our Network is particularly intrigued by a 1978 Department of Energy report which states that a total of fourteen atolls in the Northern Marshall Islands were contaminated with radioactive fallout during the 66 nuclear weapons tests between 1946 and 1958.** It seems rather mysterious that only Rongelap and Utirik, two of the fourteen irradiated atolls identified by the Department of Energy, have been provided with any follow-up medical treatment. It seems utterly incomprehensible to us why the many inhabitants on these twelve other affected atolls (e.g., Wotho, Likiep, Ailuk, and Wotje) have never been given follow-up medical treatment, and we consider it tantamount to an act of medical malpractice to have identified persons put at high risk in health terms without providing these same people with even the most rudimentary medical care.

In the words of Dr. Robert Conard, the former director of the DoE-sponsored Brookhaven National Laboratory medical program,

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* Defense Nuclear Agency document DNA 6035F, Castle Series 1954, April 1, 1982, page 202.

** "Radiological Survey Plan for the Northern Marshall Islands," Department of Energy, August 22, 1978, page II-3.

> "Until 1954, the Japanese at Hiroshima and Nagasaki were the only human populations exposed to significant radiation from nuclear detonations. As a result of the Bravo accident in 1954, following the detonation of a 15 megaton nuclear device in the Pacific, 250 Marshallese, 28 American servicemen, and 23 Japanese fishermen were exposed to a relatively unknown hazard, radioactive fallout. The medical observations of the exposed Marshallese over the past 27 years have resulted in significant findings reported in numerous publications. Health care and treatment of the exposed people during the course of the surveys and examinations also represent an important contribution. *The medical findings provide the only knowledge about the effects of radioactive fallout on human beings from detonation of nuclear devices.*"*

It is rather interesting to compare the words of Senator Ataji Balos of Kwajalein Atoll with the aforementioned statement by Dr. Conard. Speaking before the Congress of Micronesia as a representative of the Marshall Islanders in 1972, then-representative Balos condemned the United States for deporting an invited team of Japanese doctors wishing to assist the people of Rongelap and Utirik, and charged that the "United States knowingly and consciously allowed the people of Rongelap and Utirik to be exposed . . . so that the United States could use them as human guinea pigs in the development of its medical capabilities to treat its citizens who might be exposed to radiation in the event of war with an enemy country."**

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* Robert A. Conard, et al. Review of Medical Findings in a Marshallese Population 26-Years After Accidental Exposure to Radioactive Fallout. January 1980. Brookhaven National Laboratory. BNL 51261. Page 85. (Emphasis added)

** Representative Ataji Balos. "Legislative Advancement of Human Rights: The Rongelap and Utirik Incident." Paper presented in Dublin, Ireland. September 14-16, 1976. Pages 7-8.

Upon examination of the historical record, especially in light of the recent revelations concerning the alarming weather reports at the time of "Bravo," are we to infer that only Rongelap and Utirik, with high and low levels of fallout respectively, were of scientific interest to the American government, and consequently the other twelve named atolls which received fallout in the Northern Marshalls have never been followed up medically?

Turning to Section 177 of the Compact of Free Association, we are especially concerned about the espousal of pending lawsuits against the United States government by populations having an uncertain medical prognosis. While a Peace Corps volunteer, I was constantly reminded by my Micronesian friends that it was the United States itself that had taught the people of the Trust Territory about basic constitutional rights and the due process of law. These same people today ask why the United States, under Section 177 of the Compact, would deny them one of the most basic of constitutional freedoms, namely, the right to sue a negligent party in a court of law? Even the most cursory analysis of the espousal clause in Section 177 evokes the utmost consternation among people in the Marshall Islands who have been adversely affected by nuclear weapons experiments in their once-pristine and unique island environment. Not only have the people of the Marshall Islands been involuntarily and inextricably used as the human fodder for the furtherance of the nuclear arms race, but they will be left in a most unenviable position in the post-Trusteeship period. Following the massive destruction of the health, environment, and culture of the Marshallese from the nuclear tests, it is an understatement to say that the United States has violated the letter and the spirit of its United Nations Trust Agreement. It would be more accurate to say that in the name of "national security," that nebulous term, the United States has irreversibly tampered with the fragile world of the Marshall Islanders for many generations to come. In the name of humanity and decency, we urge this Committee to delete the espousal of claims portion of Section 177 in the Compact of Free Association so that future generations of Marshallese may redress unforeseen radiation problems with simple justice in a court of law.

On the subject of unforeseen radiation problems among future generations, it seems rather curious why there has been so little attention paid to possible genetic effects among the exposed Marshall Islanders. As early as 1967, Dr. Conard of the Brookhaven medical team discovered that over half of the exposed Rongelap people suffered from a rare form of "double breakage" chromosome aberration.* Yet, despite this important finding, disappointingly little has been done to monitor and record the birth outcomes of the women of child-bearing age who were exposed to fallout and who continue to live in a contaminated environment with long-lived radioactive isotopes.

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* "Chromosome Studies on Marshall Islanders Exposed to Fallout Radiation," Science, volume 157, July 28, 1967. Pages 445-7.

While conducting interviews among the irradiated Marshall Islanders in 1981, I was shocked to learn that nearly every woman I had interviewed from Rongelap and Utirik had experienced, and was continuing to experience, serious problems associated with childbearing. We have all heard of the so-called "jellyfish babies" among the exposed women in the Northern Marshalls, which is a clinical condition known technically as hydatidiform mole and resembles spontaneous abortion. We are at a loss to explain the callous and insensitive remarks made by Ambassador Zeder when he dismissed the reports of "jellyfish babies" as "the most nauseating example of bizarre propaganda I have ever seen."* We are at a further loss to explain why the Brookhaven medical team has heretofore neglected to undertake a comprehensive scientific investigation of these reports of adverse birth outcomes among people who have been diagnosed as having a rare form of chromosome aberration. Because of this obvious lack of a rigorous medical investigation of possible genetic problems among women of childbearing age, and because of the reluctance on the part of the Brookhaven medical team to collect accurate reproductive histories of exposed Marshallese women, it is appalling that Ambassador Zeder should make so cynical a remark about human beings whose only crime was their having been caught in the path of dangerous radioactive fallout without forewarning.

Under Section 177 of the Compact, the United States has earmarked a sum of $3 million to be used specifically for the conduct of an independent medical and radiological survey of the Marshall Islands. We urge this Committee to release this $3 million at the present time so that the Marshall Islanders may perform such an independent survey of their islands in order to independently assess the damage which lingers from the nuclear weapons experiments. It is only through an independent and non-governmental radiation survey of their islands and atolls that the Marshallese may make an informed and intelligent decision about their future: To date, only agencies affiliated with the United States government have been allowed to assess the radiation damage in the Marshalls. In fact, there has been an ongoing conflict of interest in terms of having agencies such as the Department of Energy and Lawrence Livermore National Laboratory - agencies which are in the business of promoting nuclear weapons and nuclear energy - conduct radiation studies in the Marshall Islands. As Karl Z. Morgan, former director of Health Physics at Oak Ridge National Laboratory, has stated in his 1982 analysis of radiation effects in the Marshalls,

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* The Pacific Daily News, August 12, 1983.

> "I can only conclude the Lawrence Livermore National Laboratory group seems to have greatly underestimated the dose, both to bone and active bone marrow from all sources of intake as well as from inhalation of radioactive products."*

Because the Lawrence Livermore group averaged the estimated intake of locally grown foods by islanders residing on some of the contaminated atolls in the Northern Marshalls, Morgan states that some individuals "will likely receive 10 to 100 times the doses that were estimated by the Livermore group."* Morgan summarizes his analysis by predicting that the prognosis for the Marshallese on some of the northern atolls includes skin cancer, lymphatic leukemia, thyroid cancer, cataracts, and genetic mutations.**

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* Karl Z. Morgan. "Consequences of Radiation Exposure to Persons Reinhabitating the Northern Marshall Islands." 1982. Page 15.

In a 1980 symposium for the American Association for the Advancement of Science, the renowned radiation scientist Dr. John Gofman (who co-discovered plutonium for the Manhattan Project) gave a rather grim prediction for the fallout victims in the Marshall Islands. After assessing the Brookhaven medical reports of the irradiated Marshallese, Gofman stated that "every child under fifteen years of age at irradiation at Rongelap should be destined to die of a premature cancer."***

It is imperative that the $3 million included in Section 177 be released at the present time for an independent survey of the Marshall Islands. If the Marshall Islanders wait until after the Compact is approved by the Congress and subsequently approved by the United Nations - a process that may drag on for an unknown period - it will be too late for the Marshallese to learn independently about radiation problems in their islands. We must urge that this money be released immediately so that the Marshallese may have the opportunity to independently assess their islands and lagoons exposed to fallout from thermonuclear explosions.

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* Morgan, Karl Z. Ibid. Page 28.

** Morgan. Ibid. Page 33.

*** "Ethno-Epidemiology: The Marshall Islanders 25-Years After Exposure to Radiation." American Association for the Advancement of Science (AAAS). San Francisco. January 7, 1980. Page 28.

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In this sense, it seems reasonable to presume that because no such independent assessment has been made of the Marshalls, that the voters in the September 7th, 1983 plebescite cast their ballots with insufficient information about lingering radiation problems. The question must be raised: If an independent survey of the Marshall Islands had revealed that radioactive contamination and its resultant effects was more extensive than previously believed, would the Marshallese have voted in favor of the Compact by a 58 to 42 percent majority? Will the children and the future children of the Marshall Islands be content with the decision their parents made on their behalf with insufficient data about radiation in their islands? Or will the future Marshallese children think that perhaps their parents voted imprudently - and without any viable alternative - by closing off all possible judicial remedies under the espousal clause of Section 177 for potential health problems that may linger due to continued radiation exposure?

Along these lines, the United States Pacific Network urges this Committee to change the language in Section 177 so as to permit the people of the Marshall Islands to contract with _any_ agency or group from _any country_ for future radiation-related assistance. As it is presently worded, Section 177 permits the people of the Marshall Islands to contract with _only_ the United States government or its affiliated agencies. The vast majority of the affected Marshallese with whom I have spoken over the past nine years have repeatedly complained about the treatment they have received from the Brookhaven medical team, and nearly all of the people from Rongelap and Utirik who have been affected by fallout have expressed a keen desire to bring in radiation specialists from Japan, Canada, the United Kingdom, New Zealand, the World Health Organization, and so on. The least this Committee can do for these unfortunate people is to allow them the freedom - after three decades - to choose whom they wish to be treated by.

FUTURE USE OF KWAJALEIN ATOLL

The United States Pacific Network also requests this Committee to ask for a full accounting of the future use of Kwajalein Atoll as a missile base for test flying the latest ICBM inertial guidance and delivery systems, as well as the ballistic missile defense system, which intensify the nuclear arms race. The deplorable apartheid-like conditions at Kwajalein, and the embarrassment that is Ebeye, must be considered at the near-termination date of the United Nations Trust Territory of the Pacific Islands. It is a sad fact that on the tiny and blighted 66-acre ghetto island of Ebeye (with more than 8,000 Marshallese), the people must pan-handle for fresh drinking water, while the 3,000 Americans on Kwajalein Island live in a country club atmosphere amidst the two billion dollar radar and missile tracking stations.

THE FEDERATED STATES OF MICRONESIA

We have just learned that a major outbreak of leprosy and tuberculosis has erupted in the Federated States of Micronesia. On the heels of the 1982 cholera epidemic in Truk, this recent epidemic of these insidious diseases in the FSM strongly suggests that something is surely amiss in the health system of the Federated States of Micronesia. In this context, what guarantee does the Compact provide for the future health of the people of the FSM and the Marshalls once the Compact is ratified? We urge this Committee to investigate the health status of the FSM and the Marshalls, especially as it relates to the recent leprosy and tuberculosis epidemics.

CONCLUSION

In conclusion, the United States Pacific Network requests the following from the Senate Committee on Energy and Natural Resources:

- The elimination of the espousal clause for pending lawsuits in Section 177 of the Compact of Free Association;
- The immediate release of the $3 million earmarked for an independent medical and radiological survey of the Marshall Islands so that the Marshallese may make an informed and intelligent decision about their future status;
- That the Marshall Islanders may choose any group of radiation experts from any country, and not just United States government-affiliated agencies, to conduct independent analyses of their islands and their health under Section 177 of the Compact;
- Consideration of another plebescite in the Marshalls because it has been demonstrated that the electorate voted with an insufficient understanding of the radiation problems in their islands;
- A full accounting of the future use of Kwajalein Atoll as an ICBM and BMD base, with particular emphasis on the standard of living for the occupants of Ebeye Island;

- An immediate investigation of the reported leprosy and tuberculosis epidemic in the Federated States of Micronesia

Finally, the U.S. Pacific Network endorses the people of the Republic of Belau in their wish to remain a nuclear-free nation. Section 314 of the Compact did not garner the requisite 75 percent of the vote it required, and therefore the people of Belau have, for the fourth time, elected to prohibit nuclear weapons, nuclear energy, spent nuclear fuel, and chemical and biological weapons from their marvelous and gem-like islands. After all, it was because of the presence of the Japanese during World War II that brought the devastation of the War to the isles of Micronesia. The presence of nuclear weapons in Belau would most certainly attract superpower rivalry - and concomitant destruction - to these small islands.

Thank you.

The International League for Human Rights

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PETITION

CONCERNING THE TRUST TERRITORY OF THE PACIFIC ISLANDS

PRESENTED TO THE UNITED NATIONS
TRUSTEESHIP COUNCIL

on behalf of

THE INTERNATIONAL LEAGUE FOR HUMAN RIGHTS

by

Roger S. Clark
Distinguished Professor of Law
Rutgers University, Camden, New Jersey

and

Member of the Board of
The International League for Human Rights

MAY 26 1983

May 20, 1983

Mr. President, I appear before the Council on behalf of the International League for Human Rights, a non-governmental organization in Consultative status with the Economic and Social Council. I believe that the League, which has always taken a special interest in matters of decolonization, has been represented at nearly all of the Council's fifty regular sessions and fifteen special sessions since its first meeting in 1947. We have been cheerfully contemplating the demise of this body for several years now, but as somebody else said, reports of its death have been greatly exaggerated. There always seems to be another bend in the road that leads to the final self-determination of this last trust territory.

I wish today to address primarily the matter of the Palau plebiscite of 10 February 1983 and to reiterate a theme which I have been stressing in the eight years that I have represented the International League at these meetings. That theme is the failure of this Council to become sufficiently involved in plebiscites such as that which just occurred. I believe that there is a lesson here for the referenda which will soon take place in the other entities.

As some of you will recall, I spoke to the Council at its special session on 16 December 1982 when the despatch of the observer mission was being discussed. I chided this Council, as firmly as one can decently do on such occasions, for its failure to take a more central role in the organization of the plebiscite. I also referred to what I called the "unfair statement of the issue" in ballot question One (B), which had just become available. It was my hope that the Council would seize the initiative and insist that the problem be corrected. Question One (B) you will remember referred to activities with dangerous substances and involved a modification of the Palau Constitution. As drafted at that time, it seemed to me a deliberate attempt to mislead the voters as to the fact that their Constitution was being modified. I regret that nothing was done by the Council. As the Report of the Visiting Mission to Observe the Plebiscite notes at page 20, it was left to legal action in the Supreme Court of Palau to straighten the matter out and to remove the misleading language. At page 36 of its Report, the Visiting Mission heaves a collective sigh of relief that the Court's action relieved it from having to take a position on whether the language was unfair or prejudicial. This body, Mr. President should have made that very easy determination, not the Court or the Visiting Mission.

In responding to my comments in December about the ballot language, the distinguished representative of the Administering Authority told this Council that:

> A further misconception being propagated here is that these elections are somehow taking place under the supervision of the United States Government. I repeat that the plebiscites in Micronesia are to be organized, conducted and run by constitutional elected Micronesian Governments, not by the United States.

(U.N. Doc.T/PV.1543 at 37)

And later that:

> Questions have been raised about the wording of a portion of the agreed Palau plebiscite ballot which concerns radioactive, chemical and biological materials. The inclusion of the question and its wording are both products of agreement between Palauan and United States negotiators. The Palauan Government considers the inclusion of the question, and its approval by a three-quarters majority, necessary under one

> provision of the Palauan Constitution in order to bring another provision of the same Constitution into conformity with the Compact of Free Association. The wording of the question on the ballot again was deemed appropriate by the executive and legislative branches of the Government of Palau.

(U.N. Doc.T/PV.1543 at 41.)

Those statements, Mr. President, were in themselves misleading when examined in light of United States Government documents which were filed with the Palau Court in the course of the challenge to Proposition One (B) and others which I have obtained pursuant to the United States Freedom of Information Act.

Consider the matter of the "supervision" of the United States Government. A December telegram to President Remeliik contained these words:

> We are concerned that the Public Information Employees working at a distance from Koror are being inconvenienced by irregularities in the issuance of their checks. We would ask that you make every effort to guarantee that paychecks for these employees are given the highest priority. We would hope that you could instruct the Minister of Finance and Administration to prepare the checks in advance so that they are available when offices open on pay day. As representatives from my office stated when they were in Palau, this short program is of the highest priority to us and we believe that any obstacles to the effective administration of this Public Information Program should be removed. U.S. funding of the information effort is based on our responsibility to insure that information about the Compact is distributed as efficiently and effectively as possible so that every citizen of Palau will have had an ample opportunity to study the provisions of the document. We expect your Budget Office to alleviate administrative burdens that could distract Public Information Personnel from their immediate duties. If your Budget Officers have any questions regarding the administration of the Program, please let us know.

If that is not "supervision", I do not know what to call it.

A January telegram to President Remeliik asserts that:

> In response to the final paragraph of your letter of December 22, 1982, I appreciate your concerns about visits during January. I have decided that no members of my staff will visit Palau at that time. Permit me to express again my appreciation for the warm welcome and hospitality you have shown to Messrs. Downs, Hannaford, Penniman and Smolka. Mr. Hannaford and three members of our team of Professors; Dr. Penniman, Dr. Smolka and Dr. Alan Cairns, will be in Palau at the time of the Plebiscite.
>
> * * *
>
> This team will be available to work with you in the final stages of the Program, and to offer Mr. Basilius assistance in explaining the Program to the United Nations observer team. Penniman, Cairns and Smolka will stay after the vote is taken, and after the U.N. observer team has departed, to witness the collection of votes in order to assist in defending Palau's efforts. I hope that you will involve them in the activities of the visiting mission. Chuck Downs will not be able to visit Palau at this time, because he is needed in Washington on other duties. The United States remains willing to send officials who may be able to help you explain the Compact and its subsidiary agreements. We will be more than happy to pass on requests for U.S. official participation to any office, and OMSN has assured us that they are willing to send Jim Berg or other members of their staff if that is your wish.

Perhaps nothing sinister, Mr. President, the arrangments for "our team", but hardly indicative of a total hands-off attitude such as the Administering Authority seemed so determined to portray.

Then there is the matter of the "agreement" to the ballot language. Those of you who have had an opportunity to read the written petition made on behalf of the International League, will be aware that annexed thereto was a copy of a telegram from Ambassador Zeder to Ambassador Salii dated 11 November 1982 - known in some circles as the "smoking gun" telegram. That telegram contained new and misleading language for Proposition One (B). With no doubt unintentional irony Ambassador Zeder described the form of language, apparently drafted in Washington, as requiring "minor modifications of the language actually included in the OEK bill." He continued that "I understand, however, that under the provisions of the bill, you can agree to the following ballot language on behalf of the Government of Palau. I therefore seek confirmation by return cable of agreement to this language by the Government of Palau." A gentle request, in an effort to obtain agreement, you might say. "Representations by the Administering Authority" is how the Visiting Mission describes the telegram at page 20 of its Report. But the language I have just quoted was followed by a kicker. "I understand that the High Commissioner is prepared to act expeditiously on the OEK legislation as soon as our confirmation of the ballot language is complete." That, Mr. President, is a threat to veto the Palauan legislation if the United States did not get what it wanted. Now "veto" is a dirty word when the action it describes is carried out by a colonial power. And we have been told many times in this Chamber how the United States power of veto has been reduced since the establishment of constitutional governments in the Micronesian entities. United States Department of the Interior Secretarial Order 3039 which governs that matter provides, however, for the "suspension" of Palauan legislation by the High Commissioner. "Suspension" sends such legislation into the same outer darkness as a veto. As the Order puts it, "A law or any part thereof so suspended shall be void and of no effect." The threat of veto got results. On 12 December, the Interior Department telegrammed the High Commissioner that "Contents in exchange cables between Ambassador Zeder and Ambassador Salii is satisfactory to OMSN and TIA. You are authorized to approve OEK legislation authorizing plebiscite on Compact of Free Association."

"Agreement" is perhaps the appropriate word to describe what happened but it was an agreement process in which it was clear who had the upper hand. And it was certainly not one in which the legislative branch in Palau "deemed" the language "appropriate", as Ambassador Sherman put it.

One might contend that since the plebiscite is over and done with, this is all water over the reef. After all, the Supreme Court straightened out the wording. But the matter should never have been resolved so late in the day. If this Council had been more aggressive in its preparations for the ballot the problem could have been corrected well in advance, and doubts about the whole process resolved.

I turn to the question of result of the vote. In his opening statement to this Council on 16 May, Ambassador Sherman asserted that:

> I will simply note at this time that the President of Palau has certified the results of the plebiscite, which show that approximately 62 percent of the voters favored the political relationship and status of free association as set forth in the Compact of free association. This approval of the Compact is a strong mandate for free association.
>
> I would note also that a ballot question directly seeking popular approval of an agreement related to the Compact which the government of Palau sought to employ as a means to reconcile a provision of the Palauan constitution with the Compact, fell short of the three-fourths approval it was considered to require -- although a majority of the voters accepted the agreement by voting affirmatively on that particular question. The United States has publicly stated its view that as a consequence the Palauan leadership must take the initiative to reconcile the constitutional provision with the Compact. We are aware that this issue is the subject of intensive discussion within Palau at the present time, and the United States remains prepared to join in that process.

That, Mr. President, is again not quite accurate. What is referred to as "an agreement related to the Compact" is in fact an amalgam of several sections of the Compact, notably sections 311, 312 and 314, and the Agreement Regarding Radioactive, Chemical and Biological Substances, which modifies those sections in significant ways. The sections of the Compact and the Agreement in question do not run afoul of "a provision" of the Constitution, but of two separate provisions, Article II, Section 3 and Article XIII, Section 6. One might, moreover, suggest that the distinguished representative of the United States has placed the cart before the horse in his suggestion that "the Palauan leadership must take the initiative to reconcile the constitutional provision with the Compact." Surely the real challenge is to modify the Compact in such a way as to reconcile it with the Constitution. The Constitution is the fundamental law of Palau. It was developed in fulfillment of the requirement of Article 76 of the Charter that the administering authority promote the development of self-government. The referendum at which it was adopted was observed by this body. I am not aware that the United States has ever modified its Constitution in order to engage in international relations. It has always expected other potential parties to treaties to come to terms with the United States Constitution. In the multilateral sphere it has often entered into treaties with reservations protecting its constitutional position. It often forgoes treaty relations for constitutional reasons. Why should Palau behave otherwise?

In my written petition I have explained why I believe that the failure of Proposition One (B) to obtain a 75 percent majority means that the Compact package was simply defeated in the plebiscite. I argued that this was so in light of (A) the relevant language of the Palau Constitution, (B) the language of the ballot, and (C) the provisions of Article I of the Radioactive Agreement. It is not feasible to go over each step of the argument here. But I do wish to recall some salient points and to draw your attention to the written version.

One preliminary point should be stressed. Section 411 of the Compact asserts that the Compact is to "come into effect" subsequent to the completion of various steps which include "Approval by the Government of Palau... in accordance with its constitutional processes." An unfortunate precedent for ignoring the requirements of the Compact was set when Section 412's requirement of simultaneity for the plebiscite in the three entities was put aside. Let us not ignore the rather basic requirements of Section 411 in the same way. The "constitutional processes" of Palau must include both the procedures and any substantive requirements of its Constitution.

A. The Constitution.

Article II, Section 3 of the Constitution provides:

> Major governmental powers including but not limited to defense, security, or foreign affairs may be delegated by treaty, compact, or other agreement between the sovereign Republic of Palau and another sovereign nation or international organization, provided such treaty, compact or agreement shall be approved by not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose, provided that any such agreement which authorizes use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require approval of not less than three-fourths (3/4) of the votes cast in such referendum.

This language is obviously designed with the proposed Compact in mind. Indeed, the two documents were being drafted at the same time and the drafters of the Constitution had in mind limiting some activities that the Compact might have permitted. The Section provides for the delegation of governmental powers to another nation or to an international organization. "Free Association" involves the delegation of some powers over foreign affairs and defense. Such a delegation, according to the Section, is to take place by a "treaty, compact, or other agreement." There are two provisoes concerning how the delegation is to be exercised, that is, what constitutional processes are involved. The first proviso says that "such treaty, compact or agreement" shall be approved by not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast" in a referendum. The import of that proviso is clear enough, although I understand that the question of whether the Senate gave the appropriate approval is one of the subjects addressed in current litigation in the Supreme Court of Palau. The second proviso says that "any such agreement" which authorizes certain nuclear activities "shall require approval of not less than three-fourths (3/4) of the votes cast in such referendum." You will notice that, unlike the first proviso, which echoes the words "treaty", "compact", and "agreement" as used at the beginning of the section, the second proviso speaks only of "any such agreement." What is the antecedent of "such" in the words "such agreement"? Surely it is "treaty, compact or other agreement." Indeed, it cannot grammatically be anything else. In short, an international agreement, whatever it is called, which delegates major governmental powers and which authorizes the proscribed nuclear activity requires a 75 percent majority for approval in a referendum. If it does not receive that majority it is defeated. It fails. The Compact of Free Association and its associated documents delegate major governmental powers to the United States. It permits activities prohibited by Section 3 of Article II of the Constitution without a 75 percent majority. It did not obtain a 75 percent majority. The "constitutional processes" of Palau were not met.

The form of the ballot, with its two separate questions, ultimately obscured the implications of what seems to be the plain meeting of the Constitution -- to say nothing of the intention of the drafters. But even when one turns to the ballot language, it becomes clear that it is the very heart of the Compact that was defeated in the balloting.

B. The Ballot Language

The relevant language of the ballot reads:

> BEFORE THE COMPACT CAN TAKE EFFECT SECTION 314 UNDER QUESTION (B) BELOW MUST ALSO BE APPROVED BY AT LEAST SEVENTY-FIVE PERCENT (75%) OF THE VOTES CAST.
>
> * * *
>
> (B) Do you approve of the Agreement concerning radioactive, chemical and biological materials concluded pursuant to Section 314 of the Compact of Free Association?

The gist of this is plain enough. Voters were told that the Compact could not "take effect" unless at least 75 percent of them answered Question One (B) in the affirmative. Sufficient votes were not forthcoming; the ~~preparation~~ was defeated in its own terms.

Proposition

None of the language was as precise as it might have been -- (1) Neither the instruction nor the proposition mentioned that it was the Palau Constitution that required submission of the question. Thus the uninformed voter did not necessarily know why it was that the Compact could not "take effect" — because of something in the Compact itself or something in the general law including the Palau Constitution. (2) The instruction finally used said that: "Section 314 under Question (B) below" must be approved by the 75 percent majority. The question asked for approval of the Agreement concluded pursuant to Section 314. The draftmanship is sloppy. Technically, both Section 314 and the Agreement (which is both a modification of the section and incorporates it by reference) required approval under the Constitution. One thing at least must have been clear to the voters -- if Question (B) failed to obtain 75 percent of the votes, then the Compact could not "take effect." "Take effect" is not a term of art defined in the Constitution or in Section 411 of the Compact where it also appears. One can hardly expect the voters to do other than give it its ordinary meaning. They must have understood it to mean that the Compact package was defeated if less than a 75 percent majority was obtained. The voters were asked for a 75 percent majority and they did not give it.

C. The Agreement on Radioactive Chemical and Biological Substances

Article I of the Radioactive Agreement provides:

> In accordance with Article II, Section 3, and Article XIII, Section 6, of the Constitution of the Republic of Palau, the Government of Palau shall seek approval of this Agreement by not less than three-fourths of the votes cast

> in a referendum in which this specific question shall be presented in conjunction with the plebiscite on the Compact.

By the Preamble and Article II of the Agreement, Section 314 of Compact was to be "incorporated by reference into, and become a part of" the Agreement.

The Government of Palau did just what it promised to do. It sought approval of the Agreement in a referendum "in conjunction with" the referendum on the plebiscite. It failed to obtain the necessary votes. The agreement incorporating Section 314 was defeated. The Compact cannot "take effect." We are driven back again to the terms of the Constitution and the ballot.

Perhaps I belabour the obvious, Mr. President. Section 411 of the Compact speaks of approval by Palau's constitutional processes. Those constitutional processes include a referendum that meets constitutional requirements. Yet I detect in some of the speeches delivered here in the past week a disposition to treat the Palau Constitution as a mere inconvenient technicality, to be brushed aside or slid by. The Constitution is not a mere technicality. It need not bend inexorably to the needs of the Administering Authority. The time is ripe for the United States to consult with Palau in order to find a way to reconcile the status of free association evidently desired by the voters with the provisions of their Constitution about which they also feel strongly. This Council must not allow itself to become a party to the subversion of Palauan constitutional processes.

MICRONESIA: THE PROBLEM OF PALAU

Prepared by Roger Clark and Sue Rabbitt Roff

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The authors have relied heavily on the writings of other people who have followed the developments in Micronesia over the past decade, particularly **Sr. Barbara Glendon, O.S.U.** of the Focus on Micronesia Coalition of the National Council of Churches.

The Photograph is from the United Nations and depicts a Palauan voting in the Koror Municipal elections of 1969.

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- To secure justice for minority or majority groups suffering discrimination, by investigating their situation and publicising the facts as widely as possible, to educate and alert public opinion throughout the world.
- To help prevent, through publicity about violations of human rights, such problems from developing into dangerous and destructive conflicts which, when polarised, are very difficult to resolve; and
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TRUSTEESHIP AGREEMENT UNITED STATES TRUST TERRITORY OF THE PACIFIC ISLANDS

PREAMBLE

WHEREAS Article 75 of the Charter of the United Nations provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent agreements; and

WHEREAS under Article 77 of the said Charter the trusteeship system may be applied to territories now held under mandate; and

WHEREAS on 17 December 1920 the Council of the League of Nations confirmed a mandate for the former German islands north of the equator to Japan, to be administered in accordance with Article 22 of the Covenant of the League of Nations; and

WHEREAS Japan, as a result of the Second World War, has ceased to exercise any authority in these islands;

NOW, THEREFORE, the Security Council of the United Nations, having satisfied itself that the relevant articles of the Charter have been complied with, hereby resolves to approve the following terms of trusteeship for the Pacific Islands formerly under mandate to Japan.

ARTICLE 1

The Territory of the Pacific Islands, consisting of the islands formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the League of Nations, is hereby designated as a strategic area and placed under the trusteeship system established in the Charter of the United Nations. The Territory of the Pacific Islands is hereinafter referred to as the trust territory.

ARTICLE 2

The United States of America is designated as the administering authority of the trust territory.

ARTICLE 3

The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreements, and may apply to the trust territory, subject to any modifications which the administering authority may consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements.

ARTICLE 4

The administering authority, in discharging the obligations of trusteeship in the trust territory, shall act in accordance with the Charter of the United Nations, and the provisions of this agreement, and shall, as specified in Article 83 (2) of the Charter, apply the objectives of the international trusteeship system, as set forth in Article 76 of the Charter, to the people of the trust territory.

ARTICLE 5

In discharging its obligations under Article 76(a) and Article 84, of the Charter, the administering authority shall ensure that the trust territory shall play its part, in accordance with the Charter of the United Nations, in the maintenance of international peace and security. To this end the administering authority shall be entitled:

1. to establish naval, military and air bases and to erect fortifications in the trust territory;
2. to station and employ armed forces in the territory; and
3. to make use of volunteer forces, facilities and assistance from the trust territory in carrying out the obligations toward the Security Council undertaken in this regard by the administering authority, as well as for the local defense and maintenance of law and order within the trust territory.

ARTICLE 6

In discharging its obligations under Article 76(b) of the Charter, the administering authority shall:

1. foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the trust territory a progressively increasing share in the administrative services in the territory; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law for the territory; and shall take other appropriate measures toward these ends;
2. promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; encourage the development of fisheries, agriculture, and industries; protect the inhabitants against the loss of their lands and resources; and improve the means of transportation and communications;
3. promote the social advancement of the inhabitants, and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants; control the traffic in arms and ammunition, opium and other dangerous drugs; and institute such other regulations as may be necessary to protect the inhabitants against social abuses; and
4. promote the educational advancement of the inhabitants, and to this end shall take steps toward the establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue higher education, including training on the professional level.

ARTICLE 7

In discharging its obligations under Article 76(c), of the Charter, the administering authority shall guarantee to the inhabitants of the trust territory freedom of conscience, and, subject only to the requirements of public order and security, freedom of speech, of the press, and of assembly; freedom of worship, and of religious teaching; and freedom of migration and movement.

ARTICLE 8

1. In discharging its obligations under Article 76(d) of the Charter, as defined by Article 83 (2) of the Charter, the administering authority, subject to the requirements of security, and the obligation to promote the advancement of the inhabitants, shall accord to nationals of each Member of the United Nations and to companies and associations organized in conformity with the laws of such Member, treatment in the trust territory no less favorable than that accorded there to nationals, companies and associations of any other United Nations except the administering authority.

2. The administering authority shall ensure equal treatment to the Members of the United Nations and their nationals in the administration of justice.

3. Nothing in this Article shall be so construed as to accord traffic rights to aircraft flying into and out of the trust territory. Such rights shall be subject to agreement between the administering authority and the state whose nationality such aircraft possesses.

4. The administering authority may negotiate and conclude commercial and other treaties and agreements with Members of the United Nations and other states, designed to attain for the inhabitants of the trust territory treatment by the Members of the United Nations and other states no less favourable than that guaranteed by them to the nationals of other states. The Security Council may recommend, or invite other organs of the United Nations to consider and recommend, what rights the inhabitants of the trust territory should acquire in consideration of the rights obtained by Members of the United Nations in the trust territory.

ARTICLE 9

The administering authority shall be entitled to constitute the trust territory into a customs, fiscal, or administrative union or federation with other territories under United States jurisdiction and to establish common services between such territories and the trust territory where such measures are not inconsistent with the basic objectives of the International Trusteeship System and with the terms of this agreement.

ARTICLE 10

The administering authority, acting under the provisions of Article 3 of this agreement, may accept membership in any regional advisory commission, regional authority, or technical organization, or other voluntary association of states, may co-operate with specialized international bodies, public or private, and may engage in other forms of international co-operation.

ARTICLE 11

1. The administering authority shall take the necessary steps to provide the status of citizenship of the trust territory for the inhabitants of the trust territory.

2. The administering authority shall afford diplomatic and consular protection to inhabitants of the trust territory when outside the territorial limits of the trust territory or of the territory of the administering authority.

ARTICLE 12

The administering authority shall enact such legislation as may be necessary to place the provisions of this agreement in effect in the trust territory.

ARTICLE 13

The provisions of Articles 87 and 88 of the Charter shall be applicable to the trust territory, provided that the administering authority may determine the extent of their applicability to any areas which may from time to time be specified by it as closed for security reasons.

ARTICLE 14

The administering authority undertakes to apply in the trust territory the provisions of any international conventions and recommendations which may be appropriate to the particular circumstances of the trust territory and which would be conducive to the achievement of the basic objectives of Article 6 of this agreement.

ARTICLE 15

The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority.

ARTICLE 16

The present agreement shall come into force when approved by the Security Council of the United Nations and by the Government of the United States after due constitutional process.

BRIEF HISTORICAL OUTLINE

A. Spanish Ascendancy

Micronesia's first contact with the West came in 1521 when Ferdinand Magellan's expedition, on its circumnavigation of the globe, sighted Guam,[8] Saipan and Rota in the Marianas and landed briefly on Guam for food and water. Subsequently, Spanish ships sailed by the Marshall Islands in 1525 and the Carolines in 1527. However, as navigation was hazardous, those two archipelagos were generally avoided and remained largely unvisited until the end of the eighteenth century.

In 1565, Miguel Lopez de Legospi claimed the Marianas as a Spanish possession while enroute to colonize the Philippines. Shortly thereafter, the Spanish galleon trade, which lasted until 1815, began plying the Pacific between Mexico and the Philippines, using Guam as a way station, but leaving the other islands of Micronesia generally unaffected.[9]

The first significant contact with the West, however, came in 1668 when Spanish missionaries led by Diego Luis de Sanvitores, a Jesuit priest, arrived in Guam, accompanied by Spanish and Filippino soldiers. The Spanish missionaries, attempting to extend the Catholic faith throughout the islands of the Marianas, met resistance from the indigenous Chamorro people who, angered by missionary activities, especially a policy of forced baptism, fought the Spanish colonizers until 1681 when they were defeated by the superior European weapons. From 1695 to 1698, the Spanish, as a means of controlling the inhabitants of the islands, forcibly concentrated all the Chamorro people on Guam, depopulating the rest of the archipelago[10] where, as one scholar has noted, they carried out "a planned and ruthless destruction of a people who would not, or could not, drop their traditions, customs, religion, life patterns; and even language."[11] It has been estimated that as a result of Spanish policies, the Chamorro population of between 70,000 to 100,000 in 1668 was reduced to around 1,600 by 1756. During this period, the Chamorro population intermingled with Filippino, Spanish, Mexican and Chinese immigrants in Guam, with the result that by the mid-nineteenth century a new Chamorro physical type had emerged. According to an observer, by 1821 the people "could not bear foreign domination and resorted to hanging themselves, infanticide, and abortion."[12] In 1816, when Spain allowed resettlement to the depopulated islands, the people, whose traditional way of life had been disrupted by Spanish colonization, had lost the skills of navigation and boatbuilding and, as a result, had to revert to subsistence farming as the primary means of livelihood.[13]

Although Spanish missionaries made several unsuccessful attempts to proselytize the inhabitants of the Caroline Islands in the early eighteenth century, the Carolines and the Marshalls remained relatively unaffected by European activities until the late eighteenth and early nineteenth centuries. In the 1820s, American whalers began frequenting the two archipelagos and by the 1860s American, British and German traders had begun operations in the islands, competing in the trade of copra, which by the late nineteenth century had become a major commodity in the world market. The islands were also subjected during this period to the notorious "blackbirding" labour trade, the slave-like system which developed in the Pacific during the mid-nineteenth century.[14] American Protestant missionaries arriving in the 1850s founded the first Protestant mission on Kusaie in the Carolines in 1852.

Thereafter the Protestant faith spread, with intermittent success, throughout the Marshall islands and the eastern Carolines, with the result that by 1900 fifty-seven Protestant churches and ninety-two schools had been established in the area.[15]

While Spain had claimed sovereignty over the Marianas in 1565, stationing a garrison of troops on Guam, it exerted little control over the rest of Micronesia and did not formally annex the Marshalls and the Carolines until 1874, when the rivalry for the expanded copra trade began to infringe on Spanish interests. In 1873, Spain issued a declaration requiring all merchant ships sailing for the Marshalls and the Carolines to obtain Spanish permission and to pay customs and licensing fees for the privilege of trading in the islands.[16] Germany, supported by Britain, however, refused to comply, alleging that Spain had never occupied the area. In 1885, the dispute was submitted to Pope Leo XIII for arbitration, who rendered a decision which recognized Spanish sovereignty, but made recognition contingent on the establishment of a Spanish presence in the islands and the maintenance of free trade for all powers.[17]

Following this decision, Spanish troops and missionaries arrived in the Carolines in 1886, establishing an administrative centre on Ponape. During this period, Protestant missionaries and teachers were expelled and the indigenous population was subjected to forced labour conditions. Rebellion against the Spanish, which broke out shortly after their arrival, continued until the end of Spanish rule.[18]

The Marshall Islands, however, were left unattended with the result that in 1885 Germany established an administrative headquarters at Jaluit and declared the area to be a German protectorate.[19] Thereafter, Germany, with Spanish acquiescence, shared control of Micronesia with Spain until the latter's defeat in the Spanish-American war in 1898 changed the political alignments in the Western Pacific.[20]

Following the Spanish defeat, Guam was ceded to the United States and the rest of Micronesia was sold by an exhausted Spanish government to Germany, which then became the dominant power in the Territory.

B. German Rule

With German control, a policy of commercial exploitation of the islands was instituted which resulted, along with other oppressive practices, in the transfer of indigenous people throughout the Territory to fill German labour requirements.[21] In 1910, protesting harsh working conditions, workers in Ponape in the Carolines, in the most violent uprising during German rule, killed four German nationals, including the German Governor. Following the rebellion, which was suppressed by German troops, 17 of its leaders were executed and approximately 400 of their followers were deported to Palau to work in the phosphate deposits.[22] German occupation, however, lasted only a brief period and in 1914, at the outbreak of the First World War, the Marshalls, the Marianas (except for Guam), and the Carolines were occupied by Japanese forces.

C. Japanese Control

In 1921, the Territory was placed under Japanese administration as a League of Nations Mandate. Administered as an integral part of the Japanese empire, Micronesia soon felt the impact of its third colonial ruler, as Japan set out to develop the islands for its own economic and military benefit. In the process, the facilities and its agricultural and fishing production was increased. While barring other nationals from the islands, the colonial power encouraged Japanese immigration as a means of alleviating Japan's own problems of overpopulation. By 1938, it has been estimated, approximately 58 per cent of the Territory's population consisted of Japanese settlers, the chief beneficiaries of Japan's development programmes.[23]

Although excellent schools were maintained for Japanese students, the schools provided for the indigenous people sought, in accordance with Japanese policy, to nuture individuals who would be "subservient to Japanese interests" and who were "not likely to rise beyond semiskilled labour."[24] Indigenous Micronesians "were not trained to share in the new economy except on the lowest rung of the labour ladder."[25] Classroom instruction, conducted in the Japanese language, was limited to a period of five years, with no secondary schools or schools of higher education provided for the Micronesian people.[26] Although the islanders stoically endured Japanese occupation, the people of Yap, the most traditional region of the Territory, countered Japanese rule through methods of passive resistance while the people of Ponape staged periodic uprisings with the result that, as had been the case in their earlier rebellion against German rule, many Ponape islanders were either deported or executed for their resistance.[27]

After Japan's withdrawal from the League of Nations in 1935, the islands were fortified and developed for military purposes in violation of the League of Nations Mandate, with the Micronesian people being forced into workgangs to build air fields and fuel dumps.[28]

During the Second World War, Micronesia became a strategic focal point in the Western Pacific, as the Western Allies and the Japanese clashed in bitterly fought battles throughout the Territory. In 1944, the Marshall Islands and the Marianas were occupied by the allied forces. During the invasion of Saipan many of the indigenous inhabitants, forced by Japanese soldiers to walk backwards off high cliffs, were killed in the waters surrounding the island.[29] Subsequently, Saipan and Tinian were turned into large military bases controlled by the Western Allies, with approximately 200,000 troops being stationed on Saipan in 1945. Except for one atoll, Ulithi, the Carolines remained in Japanese hands until the Japanese surrender in 1945.[30]

D. United States Strategic Territory

In 1947, in a trusteeship agreement between the United Nations and the United States, the islands were placed under United States administration as a strategic trust territory. Unlike the other ten trusteeship agreements, the strategic trust, which was seen by the United States as a means of safeguarding its control over the Territory, provided, *inter alia*, that the administering Power could establish military bases, erect fortifications, and station and employ armed forces in the islands,[31] close any part of the Territory to outsiders for "security reasons",[32] and, instead of reporting to the General Assembly, report directly to the Security Council where the United States maintained a veto. The United States for its part agreed to act in accordance with the United Nations Charter to promote the economic and social advancement of the people and to "promote the development of the inhabitants of the Trust Territory toward self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned."[33] As of 1980 the Trust Territory of the Pacific Islands was the only territory still held under the United Nations trusteeship system.

CONSTITUTIONAL EVOLUTION AND POLITICAL DEVELOPMENTS

A. Introduction

On 18 July 1947, the Trusteeship Agreement for the Trust Territory of the Pacific Islands, entered into by the United States and the Security Council of the United Nations on 2 April 1947, was approved by the United States Congress.[34] Under the terms of the agreement, the United States is granted "full powers of administration, legislation, and jurisdiction over the Territory." The United States President delegated by Executive Order reponsibility for the administration of the islands, on an interim basis, to the United States Secretary of the Navy [35] and appointed a High Commissioner who, subject to the direction of the Secretary of the Navy, was vested with "all powers of government and jurisdiction in the Trust Territory of the Pacific Islands, and over all the inhabitants thereof, and final administrative responsibility."[36]

In 1951, administration was transferred from the Secretary of the Navy to the United States Department of the Interior which, except for the period from 1952 until 1962 when the Northern Marianas were returned to Naval control, has continued to administer the Territory through the High Commissioner who is subject to the general supervision and direction of the Secretary of the Interior. [37] In 1954, the United States Congress, accepting this arrangement, passed a bill stipulating that "until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct and authorize.[38] As of 1980, with the exception of the Northern Mariana Islands District, which entered into a separate "commonwealth" agreement with the United States in 1976, ultimate executive, legislative, and judicial authority was still vested in the United States Secretary of the Interior, acting through the High Commissioner.

Following the United States precedents in its other dependent territories,[39] the United States, in carrying out its obligations under the trusteeship agreement to "foster the development of such political institutions as are suited to the trust territory" and to "promote the development of the inhabitants of the trust territory toward self-government or independence",[40] has treated the Territory's constitutional development and its future political status as two separate, though interrelated, issues. As a result, negotiations regarding future status, which began in 1969 between the administering Power and representatives of the Congress of Micronesia, have been carried out on one level while constitutional developments have been pursued on another.

As of 1980, the Territory has been separated into four entities — the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia (composed of four states — Yap, Truk, Ponape, and Kosrae — all in the Carolines), Palau (also in the Carolines), and the Marshall Islands.

Three of these entities — the Federated States of Micronesia, the Northern Marianas and the Marshall Islands — have adopted what is expected to be their final constitutions while only two — the Northern Marianas and the Marshalls — have defined their future relationship with the United States.

In common with some other Territories in the Pacific, the growth of political parties in the Trust Territory has been slow. By 1980, organized political parties had been established only in the Northern Mariana Islands where the Territorial and Democratic Parties (previously the Progressive Party) have been active since 1960 and in Palau where Liberal and Progressive parties have engaged in political activity since 1963. While formal political parties have not developed in the other districts, *ad hoc* groups have been formed periodically in response to specific issues, such as the recently formed Voice of the Marshalls, which led the opposition in favour of remaining with the Federated States of Micronesia.[41] Similarly in Palau various groups were formed both in favour and against unity with the Federated States.

Traditional cultural patterns in the Territory continue to have an important influence on political affairs. In general, traditional leaders are consulted by the people for guidance on political matters and are often elected to political office. [42] Active campaigning in a society which considers modesty one of its prime virtues is generally considered bad form; and, while there are signs of a weakening of this tradition — as seen in recent vigorous campaigns in the Northern Marianas and Palau, most elections in the Trust Territory are rather sedate, with a person's reputation, community position, and traditional ties remaining the important determinants in Micronesian elections.

B. 1947-1965

The Constitutional evolution of the Territory has been slow. The administering Power granted some governmental functions to the people on the municipal and district level prior to 1964,[43] by establishing gradually in each of the Territory's administrative districts, elective district legislatures with limited power of legislation subject to the veto of the High Commissioner. However, there was little attempt to bring the people into the Trust Territory government prior to the creation of the Congress of Micronesia in 1964.

In 1952, a High Court, presided over by a Chief Justice appointed by the Secretary of the Interior, was constituted, together with a district court for each administrative district and a community court for each community. No provision was made for appeals from the High Court to the courts in the United States.[44]

From 1956 until 1964, the High Commissioner was assisted by two successive Advisory Councils. The first, established in 1956, was an appointed body; the second, created in 1961, elective. However, as both councils served only an advisory role, they had little practical influence on the administration of the Territory.

In the early 1960s, amidst increasing international pressure for rapid decolonization and growing criticism of the United States administration of the islands, notably a 1961 report of a United Nations Visiting Mission to the Territory,[45] the administering Power became increasingly aware of the need to carry out its trusteeship responsibilities and to confront the question of Micronesia's future political status. In 1962, the United States, according to a then confidential United States Government report, adopted a policy aimed at bringing "Micronesia into a permanent relationship with the United States." To this end, the administering Power sought to accelerate the "development of the area to bring its political, economic, and social standards into line with an eventual permanent association."[46]

Pursuant to this policy, a United States mission led by Mr. Anthony N. Solomon, a Harvard University professor and later Under-Secretary of the Treasury, visited the Territory in 1963 to study economic, social, educational and political developments. The mission's report recommended that a plebiscite should be held by 1968 on the Territory's future status; and, that, in the interim, the United States should concentrate on obtaining the goodwill of the people through expanded economic and social programmes so as to ensure a vote which would comport with United States objectives of permanent association.[47] In 1963, financial appropriations were tripled and educational and health care programmes strengthened. However, as United States interest turned to other concerns in the mid-1960s, particularly Viet Nam, Micronesia was once again accorded a low priority by the administering Power[48] and the plebiscite proposed in the Solomon Report was never carried out.

The first grant of some legislative powers to the people on a Territory-wide basis came in 1964 when the administering Power established the Congress of Micronesia, an elected legislature with limited powers of legislation.[49]

The Congress, a bi-cameral legislature consisting of the House of Delegates and the General Assembly, was authorized to legislate only with respect to subjects of local application and was specifically prohibited from passing bills which were inconsistent with the executive orders of the President of the United States, orders of the Secretary of the Interior, treaties or international agreements of the United States, laws of the United States applicable to the Trust Territory, or the "bill of rights" section of the Trust Territory code. In addition, the Congress could not tax property held by the United States or tax the property of non-residents at a higher rate than that of residents.

The House of Delegates was composed of twelve members, two members from each of the six districts of the Territory, who served for a term of four years. The General Assembly consisted of twenty-one members, apportioned amongst the six districts on the basis of population, with each district, however, entitled to at least two Assemblymen. Members of the Assembly were elected every two years.

The House of Delegates and the General Assembly were granted identical powers. Bills could originate in either House and could be amended, altered or rejected by the other, with a majority of both Houses of the

Legislature voting in the affirmative being required for passage of a bill. The High Commissioner, who retained executive power, was authorized to submit proposed legislation to the Congress for its consideration and to veto bills passed by the legislature. Any bills passed over his veto were subject to approval or disapproval by the Secretary of the Interior. The High Commissioner, with the approval of the Secretary, could also declare a bill passed if he designated it as urgent and the legislature failed to pass it "in its original form or an amended form acceptable to the High Commissioner."

The Congress of Micronesia remained the sole legislative authority in the Territory (except for the Northern Mariana Islands) until 1978 when it was abolished by an order of the Secretary of the Interior following the referendum which led to the division of the Territory into four units.

C. 1965 to 1980

The first elected Congress of Micronesia convened in July 1965 and shortly thereafter considered the question of the Territory's right to self-determination. This was followed in 1966 by a petition to the administering Power that a Micronesian status commission be established. However, when a favourable response was not forthcoming, the Micronesian legislature created its own commission on 8 August 1967[50] which, in July 1969, recommended that the Territory should become either a self-governing state in free association with the United States or completely independent.

Shortly thereafter, the administering Power, seeking, according to a former United States Secretary of Defense, "only to change the form of the trusteeship agreement while retaining the basic objectives and responsibilities,"[51] reluctantly entered into negotiations with the Joint Committee on Future Status of the Congress of Micronesia. Since 1969 talks have continued at a slow, uneven pace. A staff report of the United States House of Representatives Committee on Foreign Affairs concluded in 1979 that "low priority and inadequate interest on the U.S. side, generally unprepared U.S. negotiations, and confusion as to political goals on the part of the Micronesians have all contributed to the slow place of the negotiations."[52]

In 1976 the United States entered into a separate commonwealth agreement with the representatives of the Northern Marianas. Thereafter, negotiations for a "free association" relationship were conducted by the administering Power first with the Congress of Micronesia and subsequently with the three political status commissions representing Palau, the Marshalls, and the Federated States of Micronesia. During the mid-1970s, these negotiations were marred to some degree by allegations, which were subsequently confirmed by the U.S. Senate Intelligence Committee, that the U.S. Central Intelligence Agency had bugged the conference room where talks were being conducted in order to get information on the negotiations.[53]

In April 1978 all parties to the negotiations, meeting in Hilo, Hawaii, accepted a "Statement of Agreed Principles for Free Association" which provided that the Micronesians shall "enjoy full internal self-government" while the United States will maintain "full authority and responsibility for security and defense matters for a period of at least 15 years, subject to renegotiation. The administering Power recognized the right of unilateral termination by either side and the "authority and responsibility (of the Micronesians) for their foreign affairs including marine resources." Unilateral termination by the Micronesians was tempered, however, by the provision that should the relationship be terminated other than by the U.S. or by mutual consent the United States "shall no longer be obligated to provide the same amount of economic assistance . . . initially agreed upon.[54]

Palau

Unlike the other three Trust Territory entities — the Marianas, the Federated States of Micronesia and the Marshalls — the Palau District, located in the Caroline Archipelago, did not, as of January 1980, have its own Constitution. As a result, Palau was being administered under an arrangement whereby executive power vested in the High Commissioner of the Trust Territory; judicial power in the Trust Territory judiciary established in 1952; and, legislative power in the interim legislative body created by order of the U.S. Secretary of the Interior in September 1978. The Palau District has a population of approximately 13,500 and a total land area of 305.8 square kilometres.

Following Palau's rejection of the Constitution of the Federated States of Micronesia in July 1978, the Palau District Legislature established a Constitutional Convention, which, in April 1979, adopted a proposed Constitution of the Republic of Palau providing for a federal system of government composed of separate executive, legislative and judicial branches. Under the terms of the draft, the executive power would vest in a President and Vice-President, with a cabinet composed of the heads of the major executive departments to be appointed by the President on the advice and consent of the Senate. A Council of Chiefs, consisting of a traditional chief from each of the states of Palau, chosen in a traditional manner, would advise the President on matters concerning traditional laws, customs and their relationship to the Constitution and laws of Palau.

The legislative power would be vested in the *Olbiil Era Kelulau*, a bicameral legislature composed of a House of Delegates and a Senate. Reversing the usual role of the two chambers, the draft Constitution provides that the House, consisting of one delegate elected from each state, would be the upper legislative chamber; while the Senate, composed of the number of Senators as determined periodically by a reapportionment commission, the lower. A citizen must be eighteen years of age in order to vote. Both legislative chambers would share equal powers, with revenue bills originating in either House. For a bill to become law, it must be approved by a simple majority of each House on three separate readings and signed by the President who is granted the right of vetoing bills. A Presidential veto, however, could be overridden on a two-thirds affirmative vote of the members of each chamber of the legislature.

The judicial power would vest in a Supreme Court, composed of both appelate and trial divisions and presided over by a Chief Justice; a National Court, which would have original and concurrent jurisdiction with the trial division of the Supreme Court except in matters reserved exclusively for the latter's jurisdiction, and such inferior courts of limited jurisdiction as might be established by law. The Supreme Court would be the final appellate court. There is no provision for appeals to the courts of the United States.

The Constitution included a bill of rights similar to those found in the constitutions of other districts. The President would be authorized to declare a state of public emergency, but his power to do so would be circumscribed by the constitutional provisions that a state of emergency could not last for more than 10 days without the approval of the legislature, which must be convened at the time the state of emergency was declared, to consider the President's action.

Additionally, provisions would be made for a 200 mile maritime zone as well as the prohibition of the use, testing, storage, or disposal in Palauan territory of "harmful substances such as nuclear, chemical, gas or biological weapons" without the express approval of voters in a referendum. The Constitution would also place tight restrictions on the acquisition of land for U.S. military purposes.

As of 1980, political activity in Palau was centered around the proposed Constitution, which the administering Power, objecting to the provisions concerning the 200 mile maritime zone, and nuclear testing and storage and the restrictions on military use, found incompatible with its defense responsibilities under a compact of free association.[55] While the U.S. had also opposed similar language in the Constitution of the Federated States of Micronesia on both the question of the testing and storage of nuclear material as well as that of the 200 mile maritime zone, which it felt could be used to deny free ship and air passage through a 7.8 million square kilometre zone,[56] it was particularly critical of the Palauan provision which made approval of nuclear activity dependent on the outcome of a popular referendum rather than by intergovernmental agreement, as provided in the Constitution of the Federated States of Micronesia.

In June 1979, reportedly owing to U.S. pressure,[57] the Palau District Legislature, at a meeting which was boycotted by 10 members supporting the draft Constitution, passed a bill nullifying the proposed Constitution and cancelling a plebiscite scheduled for July. However, due to the fact that a lawsuit was subsequently filed in the High Court of the Trust Territory by pro-Constitution forces challenging the legality of the bill, the High Commissioner of the Trust Territory did not at that time act on the measure, which had been submitted to him for approval. Instead, he allowed the referendum to be held on 9 July 1979, under the observation of a United Nations Visiting Mission with the result that the Constitution of the Republic of Palau was approved by 92 per cent of the votes cast. In August 1979, however, the legislature's action abrogating the proposed Constitution was upheld by the High Court of the Trust Territory and the High Commissioner refused to certify the results of the July referendum approving the Constitution. Thereafter, the legislature, still meeting without a quorum, established a new Constitutional Drafting Commission which revised the draft Constitution so as to comply with the U.S. objections. Submitted to the people in a refrendum on 23 October 1979, the revised Constitution was rejected by 70 per cent of the voters.[58]

STRATEGIC ISSUES

(While nuclear testing did not occur on Palau, Palau's Constitutional provisions on nuclear materials must be viewed against the background of events in the Marshall Islands.)

By virtue of Micronesia's designation as a strategic area, military considerations have played an important part in the United States administration of the Territory. While the main objective of the administering Power has been to deny use of the islands to other powers, the U.S. has actively used the Territory to serve its own military needs.[59] For instance, from 1952-1962, a CIA base was in operation on Saipan and since the mid-1940s weapon tests have been conducted in the Marshall Islands.

Between 1946 and 1958, Bikini and Enewetak atolls, located in the Marshalls, were used by the administering Power as sites for nuclear tests. As a consequence, in 1946 the 166 people living on Bikini were forcefully transferred by the administering Power first to Rongerik Island and two years later to Kili Island, 805 kilometres away; while in 1947, the 146 inhabitants of Enewetak were moved to Ujelang Island, 364 kilometres to the south. In 1954, a further involuntary evacuation of indigenous people occurred when the 82 inhabitants of Rongelap atoll (also in the Marshalls) were transferred to Majuro Atoll, a distance of approximately 700 kilometres, following their exposure to atomic radiation. Provided with medical treatment, the islanders remained in Majuro until 1957 when they were permitted to return to Rongelap.

In 1958, following the cessation of nuclear testing in the Territory, the inhabitants of Bikini, crowded onto the 1.3 square kilometre island of Kili, sought permission from the administering Power to return to their home atoll with its thirty-six islets comprising a land area of 5.2 square kilometres. This request, however, was not granted until 1974 when the administering Power, after extensive bulldozing of the atoll to ruduce the level of radiation, felt the area was safe again for human habitation.[60] When the people returned, they found that, as a result of the nuclear tests, there had been a considerable alteration of their atoll, including the annihilation of one of its islets and severe damage to its reef. In 1978 it was discovered that the level of radioactive contamination on Bikini was still unsafe and the people had to be re-evacuated to Kili Island. As of 1979, the United States estimated that it would be another 30 to 60 years before Bikini would be usable for agricultural purposes.

After 1958, the United States used Enewetak Atoll for non-atomic explosions with the result that, in addition to the damage caused by the nuclear programme, Enewetak was further marred by craters measuring up to 15 metres in depth and 90 metres in circumference.[61] In 1972, however, the tests were suspended when a United States federal district judge ruled that the programme violated United States laws on the environment. In 1979, in response to the inhabitants desire to return home, the administering Power indicated that it expected the people of Enewetak to be resettled in 1980.

Since the mid-1940s, the U.S. Army missile range located in Kwajalein Atoll in the Marshall Islands has been an important testing site for U.S. missiles fired from Vandenburg Air Force Base in California, 13,000 kilometres away. Today, Kwajalein is the United States' most active missile range. In July 1979, a group of Marshallese called for the suspension of all tests in the missile range following reports that the area was being contaminated by radioactive material contained in the weapons tested. Shortly thereafter, about 700 islanders staged a protest occupation of some of Kwajalein's islets demanding an end to the testing, the renegotiation of the terms of a lease signed with the United States in 1964 for the use of the land, and the improvement of the economic and social conditions of the Marshallese people.[62]

As a result of employment opportunities on the U.S. base, there has been an influx of people from throughout the District into Kwajalein Atoll. However, as U.S. policy prohibits those islanders working on the base from residing there after working hours, the Marshallese commute daily between the base and Ebeye, a nearby islet with a land area of 30 hectares. In 1978 a U.N. Visiting Mission pointed out that there were approximately 8,500 people concentrated on Ebeye in what a U.S. official has described as "slum" conditions.[63] Of these, around 60 per cent were not indigenous to the Kwajalein Atoll. This situation, as noted in 1979 by another U.N. Mission, presented a "glaring contrast with the Kwajalein base, 15 minutes away by boat, where 3,000 people live in very comfortable conditions in an area much larger than Ebeye". According to the Mission's report Ebeye represents all the characteristics of an over-populated and undeveloped agglomeration which, unless corrected, could result in "very serious difficulties."

War and post-war damage claims

A major issue of concern in the Territory has been the question of claims against the Japanese Government, mainly for damages sustained by the indigenous inhabitants during the Second World War, and post-war claims against the Government of the United States resulting from personal injury or material damage, including claims for the acquisition, use or retention of property without adequate compensation. As a means of settlement, the United States and Japan agreed in 1969 to contribute U.S. $5 million apiece to a Micronesian claims fund. In the agreement, it was stipulated that the United States would administer the fund and that Japan, by its contribution, would be discharged from any further liability.

In 1971, this arrangement was implemented by the U.S. Congress which passed the Micronesian Claims Act. This bill established a Micronesian Claims Fund, and set up a Micronesian Claims Commission which was authorized to receive, examine, adjudicate and render final decisions with respect to: (a) claims for damage directly resulting from hostilities between the United States and Japan between December 1941 and the dates of the securing of the various islands of Micronesia by the United States, and (b) claims arising as post-war claims between the dates of securing the various islands by the United States and 1 July 1951, when the Territory was placed under civilian administration.

The Claims Commission completed its work in July 1976 and issued a final report in which the amount of the awards certified by the Commission exceeded the value of the fund. Although the United States has appropriated funds for the full payment of post-war claims, it has refused to pay the excess amount awarded for claims directly arising out of the hostilities unless Japan agrees to share the cost. Japan, relying on the 1969 agreement, has so far refused to contribute. According to a U.S. Congressional study, "Micronesians are very bitter about this and argue that if the Japanese will not pay, the United States should."[64]

ECONOMIC, SOCIAL AND EDUCATIONAL CONDITIONS

The Trust Territory of the Pacific islands is an underdeveloped territory in which a money economy, concentrated principally in the district centres, has emerged alongside the traditional subsistence way of life, based on agriculture and fishing, which remains the primary livelihood for a majority of the population. The Territory has a weak economic base. According to the administering Power, "labor, land, natural resources, capital, and infrastructure basic to development are meagre". There is almost a complete absence of industry and such manufacturing as takes place consists primarily of cottage-type activities carried out in the subsistence sector of the economy. For those in salaried occupations, the principal employee is the Trust Territory Government which employs over half the work force.

The balance of trade is in deficit, with imports far exceeding exports. In 1977 — the last year for which official figures are available — exports were US $16.2 million while imports totalled US $44.2 million (excluding the Northern Marianas) — primarily industrial supplies, fuel and consumer goods. The major exports were copra and fisheries, which together with tourism represented US $11.2 million of the total amount exported.

The main support for the Territory's economy is provided by the administering Power through an annual appropriation and programme grants from U.S. federal agencies. In 1978, the annual appropriation was US $114.1 million and programme grants were around US $35 million, or about 94 per cent of the total cost of Trust Territory operations. The balance was met by local revenues collected primarily from the salaries of those employed by the U.S. Government. The official currency of the Territory is the U.S. dollar as the Trust Territory does not have its own monetary system.

According to the 1976 United Nations Visiting Mission to the Territory, the substantial inflow of funds from abroad has in some respect distorted the economy and impeded progress towards self-sufficiency.[65] Grants from the administering Power, as noted by a Micronesian observer, have been devoted primarily towards social services and welfare programmes instead of towards the development of infrastructure and income-producing activities, with most expenditures, for both capital improvement and operations, being used almost entirely to encourage consumption of imported goods.

A staff report of the U.S. House of Representatives concluded that "from a development point of view, U.S. assistance has been questionable. After a long period of neglect about U.S $1,400 per capita aid a year is now being provided by various Federal agencies but with ineffective oversight and coordination and little incentive for self-help."[66] "The grants," a Trust Territory Official has pointed out, "don't get down to the people . . . Too much goes to government officials, experts and so on"[67] with "a large part of the money," according to the *New York Times*, being "spent on administrative expenses, such as salaries and official travel" throughout the Territory.[68] Recently, allegations of fraud and mismanagement have caused some to call for legislation to ensure resource accountability.[69] As pointed out by the Carnegie Endowment Study "there seems to be general agreement that the United States has failed dismally to develop Micronesia economically".[70]

According to one authority, United States economic policies, whetting the Micronesia taste for the amenities of a modern technological society, have resulted in a "striking and pervasive unreality which affects every aspect of life in the islands" coloring "the way people think, what they expect and how they conduct themselves".[71]

As a result of a fast increasing population (3.5 to 5 per cent annually), the shift of population to district centres, and expectations of rising standards of living, the people have become heavily dependent on imported foods and materials. In 1974, a U.S. publication reported that eating habits "have changed radically, shifting from locally produced fruit, vegetables and fish to canned goods — such as macaroni — imported from the U.S."[72] In 1978, a United Nations Visiting Mission noted that rice, which is not grown in the Trust Territory, had become a staple diet and was imported under the food aid programmes financed by the administering Power.

With limited natural resources, the Territory's future economic growth appears to lie largely with the development of marine resources and the tourist industry. Except for Palau, where successful pole and line fishing for skipjack and tuna has been conducted for some time by the Van Camp Seafood Company, most of the fishing carried out in the Territory is on a subsistence level. Rural areas usually supply their own needs while the crowded district centres depend on imported fish, including canned tuna, to meet their consumption requirement. By 1978, however, in addition to Palau, small-scale fisheries operations had been established in the district centres of Truk, Ponape, Yap and the Marshall Islands as a means of supplying fish to the local markets.

The utilization of the 200 mile economy zone, however, seems to offer the major potential for the exploitation of the Territory's marine resources. As a result of Micronesia's geography, the economic zone would actually represent 7.8 million square kilometres, containing "one of the last unexploited tuna fishing grounds in the world"[73] with a possible annual yield of about 40,000 metric tons. Due to the fact that the indigenous fishing industry does not yet have the required capital, skill, and necessary infrastructure to exploit these resources successfully, as well as a general Micronesian aversion to spending time at sea[74], the four entities comprising the Trust Territory — the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau — have turned to foreign fishing interests as a means of exploiting their marine resources. As of 1979, two districts, the Federated States of Micronesia and Palau, had concluded agreements with foreign fishing associations for the right to fish within their respective economic zones.

After copra production which accounted for US $5 million of the Territory's exports in 1977, the nascent tourist industry is the second leading export industry. In 1977, 22,660 persons visited the Territory, spending approximately US $2.3 million, an increase of 15 per cent over the preceding year. Although tourism is concentrated primarily in the Northern Marianas, the most economically advanced district of the Territory, a modest tourist industry is being developed on Palau and to some extent on Yap, Truk, Ponape and the Marshall Islands.

Regular air service links all district centres of the Territory and in 1978 the United Nations Trusteeship Council commended the administering Power for its continuing efforts to improve the transportation system in Micronesia.

While trade-unionism is not yet a significant force in the Territory, some development has occurred in Palau where the workers of four local businesses have formed their own trade associations, and in October 1979 held what was the first workers convention in Micronesia. At that meeting, it was indicated that efforts were also being made in Palau to organize teachers, port workers, and government employees.[75]

As noted by the 1976 United Nations Visiting Mission, land in Micronesia is a scarce commodity which commands a place in peoples' lives beyond any monetary value and confers on its inheritor an automatic position of prestige and power. The Territory has a land area of 183,231 hectares,[76] which is composed of approximately 6,480 hectares under cultivation — generally for subsistance farming — some 33,802 hectares planted with tree crops — coconut, breadfruit, bananas, and pandanus — and around 107,940 hectares representing forests, pastures, and savanas. The remaining land consists of swamp, rock and built-up areas.

Of the total area, 73,647 hectares are privately owned and 109,584 hectares are classified as public land under the control of the Trust Territory Government. While most of the privately owned land is held by customary title in accordance with the custom and usages of the inhabitants, these traditional practices, as indicated by the administering Power, are being modified as a result of "decisions of the High Court of the Trust Territory and by the widespread receipt of money for land use and sale which have occurred since the U.S. administration of the Territory began".[77]

In the mid-1970s, it was estimated that most of the land in the Northern Mariana Islands, Palau, and Ponape was publicly held, while in Yap, Truk and the Marshalls there were only minor public holdings.

In 1974 the U.S. Secretary of the Interior issued an order providing for the transfer of public lands to local control. Under the terms of the Covenant between the Northern Mariana Islands and the United States, public lands in that district wre transferred to the Government of the Northern Marianas in 1978, with the United States, however, retaining the right to use for defense purposes approximately 7,203 hectares on Tinian, 72 hectares on Saipan, and all the 83 hectares on Farallon de Medinilla.[78]

Free compulsory public education is provided for students from 6 to 14 years of age. In 1978, there were 228 public schools and 20 private schools in the Territory, with an enrollment of 31,257 students, representing almost 100 per cent of the school-age population. According to one authority, the educational system, based on the American model has resulted in problems of personal identity for many graduates vis-a-vis their traditional culture as well as a growing frustration amongst many students, who, upon completion of their schooling are unable to find jobs commensurate with their skills.[79]. Recently, the job market has filed to keep pace with the number of high school graduates with the level of unemployment being around 20 to 25 per cent in the overpopulated district centres. As noted in an article in *The Washington Post*, many of the newly educated Micronesians are "turning to alcohol, crime and suicide," with the latter being "now the leading cause of death among young men".[80]

In 1976, the United Nations Visiting Mission to the Territory reported that although English was the language used in secondary schools, programmes in local language were being introduced, as had been done at the elementary level since 1972.

While there are three colleges in the Territory, the Northern Mariana Islands Community College, the College of Micronesia in Ponape, and the Micronesian Occupational College, most students go abroad to pursue a university level education. In 1978, over 3,000 students were attending institutions of higher learning outside of the Trust Territory, primarily in the United States, largely under a programme of loans and grants established by the administering Power. Unfortunately this policy appears to have led to a "brain drain" in the Territory. As of 1976 United Nations Visiting Mission noted, "too many graduates (studying abroad) tend to seek work outside the Territory". Expenditures for education totalled US $12.7 million in 1976-77.

Total expenditures on public health for the same fiscal year amounted to US $8.2 million, excluding the Northern Mariana Islands. According to the report of the administering Power there were seven main hospitals in the Territory and two subdistrict hospitals, one at Rota and the other at Ebeye. In 1977 there were 52 physicians, 24 dentist, and 587 nurses providing health care throughout the islands. Most of these were employed by the Department of Health Services which has the responsibility for planning, organizing, and administering all Micronesian medical and health programmes.[81]

In 1978, the Trusteeship Council noted with satisfaction that the immunization level in the Territory was now equal to that of many developed countries and that progress had been made in strengthening the health and hospital infrastructure of the Trust Territory.

ROLE OF THE UNITED NATIONS

Since 1965, the Trusteeship Council has repeatedly reaffirmed the right of the people of the Trust Territory of the Pacific Islands to self-determination, including the right to independence. It has also expressed frequent concern at the slow pace of economic and social development in the Territory, and called on the United States to accelerate progress in those fields.

In 1965, following the creation of the Congress of Micronesia, the Trusteeship Council expressed its satisfaction with the establishment of the national legislature and the hope that the Congress would direct its attention to all the possibilities regarding the future status of the Territory. In 1968, the last year in which members elected by the General Assembly were represented in the Trusteeship Council, the Council welcomed the creation of the Status Commission of the Congress of Micronesia. Since the beginning of status negotiations in 1969 the Trusteeship Council has repeatedly expressed its concern with the slow progress of the talks. In 1973, a Visiting Mission to the islands issued a report reminding the administering Power, which had refused to discuss independence as a possibility except under prior conditions, that "it is implicit in the Charter and in the Trusteeship System that the goal is eventual independence unless agreement is reached on some other status acceptable to the people of the Territories concerned through an act of self-determination."[92]

The Trusteeship Council has repeatedly shown its concern with the question of the unity of the Trust Territory. In this regard, it noted for the first time in 1972 that separate talks between the Northern Marianas and the administering Power would probably lead to a separate political status for that district.

In 1973 the Council expressed its regret "that the situation should have developed to a point where the Mariana Islands District might have a different political status from the rest of the Territory," but hoped that if secession could not be avoided, the Northern Marianas would maintain close political, economic and cultural links with the rest of Micronesia so as to leave open the possibility of future reunification.

In 1974, the Trusteeship Council expressed its "genuine concern" that the Marshall Islands had expressed the intention of initiating separate status negotiations with the administering Power; and, in 1975, regretted that it had not been possible to hold simultaneous consultations in the Mariana Islands District and in the other districts of Micronesia.

In June 1975, the Trusteeship Council agreed to send a visiting mission to observe the plebiscite in the Northern Mariana Islands District.[93] The Council's decision was reached despite opposition by the Soviet representative on the grounds that the Soviet delegation objected to any action aimed at separating the Mariana Islands from the rest of the Trust Territory and their subsequent inclusion into the United States.[94] In 1976, the Trusteeship Council, again with Soviet disapproval, took note of the report of the Visiting Mission which concluded that the plebiscite in the Northern Marianas District had been "freely and properly conducted" and that the people of the Northern Mariana Islands had "in the free exercise of their right of self-determination" approved the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States.[95] At the same time, however, the Council recalling its earlier concern about separatist tendencies in the Palau and Marshall Islands districts, affirmed its conviction that the political unity of the Carolines and the Marshalls should be maintained.

Since 1976, the Trusteeship Council has not made concrete recommendations on the future political status of the Territory. Instead, it has reiterated its view that, amongst all the options open to the inhabitants, including independence, the status of free association, if endorsed by the population, would not be inconsistent with the aims of the Trusteeship Agreement. According to the report of a 1976 United Nations Mission to the Territory, the Micronesian people expressed "a general but regretful feeling that the Territory was still too dependent on United States aid to be able to consider loosening its ties with the administering Authority."

In 1977, the Trusteeship Council noted the expressed desire of Palau and the Marshall Islands districts for separate political status negotiations with the United States and, in 1978, while reiterating the conviction that the political unity of the Caroline and Marshall Islands should, if possible, be maintained, recognized that it was ultimately for the Micronesians themselves to decide upon their future political relations with each other.

In July 1978 the referendum on the proposed constitution of the Federated States of Micronesia was observed by a Mission of the Trusteeship Council.[96] Following the rejection of the constitution by the Marshall Islands and Palau.

> The United States wishes to record its view that the draft trusteeship agreement is in the nature of a bilateral contract between the United States, on the one hand, and the Security Council on the other. The Agreement confines itself to provisions for the powers, duties and responsiblities of the Administering Authority . . . and does not attempt to define the responsibilities of the Security Council in this respect; they are in the Charter; and no amendment or termination can take place without the approval of the Security Council.[97]

A distinguished legal scholar has cited the 1950 Advisory Opinion of the International Court of Justice in the South-West Africa case [98] in support of the contention that Security Council approval is required for the termination of the Trusteeship Agreement. On that occasion the International Court unanimously rejected the view that South Africa could unilaterally terminate the League of Nations mandate over South-West Africa. In his view "there appear to be no textual differences in the relevant documents that permit the South-West Africa case to be distinguished in the present instance."[99] This view is in agreement with the conclusion expressed in the Carnegie study that "the United States has a legal duty to obtain Security Council approval for termination of the Trusteeship Agreement."[99]

End of excerpt from *Decolonization* No. 16.

In 1960 The United Nations General Assembly had codified, in Resolution 1541 (XV), the outcomes of the decolonization process that were acceptable to the evolving international community. Three possibilities were mentioned: independence, free association with an independent state, or integration with an independent state. The first option had been the outcome in the overwhelming majority of decolonization cases. The second option has been approved by the United Nations in only two cases — New Zealand's relationship with two of its former colonies, the Cook Islands and Nuie. It entails self-government for the entity concerned in its internal affairs and some sharing or delegation of power in the field of foreign affairs and security. It envisages the right of the associated entity to terminate its relationship unilaterally. Integration as envisaged by Resolution 1541 (XV) entails complete assimilation of the entity as occurred notably in the cases of Alaska and Hawaii. In addition to the three Resolution 1541 options there has been persistent discussion in the Micronesian context of a fourth, "commonwealth", option on the dubious precedent of Puerto Rico, an precedent narrowly approved by the General Assembly in 1954, before its principles of decolonization had been completely developed. That status entails less freedom of action by the entity in foreign affairs, residual legislative and even executive authority by the metropolitan power in internal affairs, and the inability of the entity to terminate the arrangement unilaterally. Whether such a status would be approved by today's United Nations is open to question.

In any event, negotiations with the United States on what became known as "future status" began under the auspices of the Congress of Micronesia in 1969. For the most part, both United States and Micronesian negotiators downplayed the independence possibility — the United States from concern with its military interest, the Micronesians because of a felt need for continued United States material assistance. The negotiations thus centered largely on the free association option. It soon became apparent that a closer, Commonwealth, deal could be struck with the various Islands which had shown persistent separatist tendencies. The United States decided to ignore United Nations pleas not to encourage separatism within Micronesia and met separately with the representatives of the Marianas. By 1974 the United States had indeed struck a separate deal with what now became known as the Northern Mariana Islands. The deal was for a close "commonwealth" relationship with the United States, modelled on Puerto Rico, with the territory being annexed to the United States and its inhabitants becoming United States citizens. But the Territory's rights in the union would stop short of those of statehood. (Professor Clark has commented in his article "Self-Determination and Free Association — Should the United States Terminate the Pacific Islands Trust?," in 21 *Harvard International Law Journal* 1, 1980, that the Marianas agreement does not meet United Nations standards for a genuine case of decolonization.) Further fragmentation of the Micronesian territories followed. By 1978 there were four entities. In addition to the Northern Mariana Islands, there were Palau in the Western Carolines, the Federated States of Micronesia (the remainder of the Caroline group) and the Marshall Islands. All these entities drafted and approved their own constitutions and continued to negotiate for the status of free association with separate but parallel deals which would come into place without any continuing all-Micronesia entity. Various versions of the Compact of Free Association were spelled out in lengthy negotiations. In 1982 a Compact was signed by the United States, on the one hand, and Palau, the Marshall Islands and the Federated States of Micronesia on the other. This version was eventually approved in referenda held in the Federated States in June. 1983 and in the Marshall Islands in September 1983.

Palau, however, enacted a Constitution which forbids the presence of nuclear substances — waste or weapons — in its territory. By its own terms, a 75% vote is required to change the terms of the Palauan Constitution

Palauan Points of View

In his statement to the Fiftieth Session of the United States Trusteeship Council on May 20, 1983, The High Chief Ibedul Yutaka M. Gibbons explained why the Palauan Constitution makes it impossible for the Palauan people to accept the Compact of Free Association.

"Briefly, the reasons the Compact has not been approved are quite simple. By virtue of section 314 of the Compact the United States was authorized to store in Palau in certain circumstances toxic chemical weapons and radioactive materials and toxic chemical materials intended for weapons use. This authorization activated the provisions of article II, section 3 and article XIII, section 6 of the Constitution of the Republic of Palau. These constitutional provisions provide that a Compact that authorizes storage of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require the approval of not less than two-thirds of the members of each House of the *Olbiil Era Kelulau* and three-fourths of the votes cast in a nation-wide referendum.

The constitutional mandate is clear. In addition to requiring the express approval by three-fourths of the votes cast in a referendum on the specific question of section 314, it also requires three-fourths of the votes cast on the Compact as a whole where such Compact contains a provision such as section 314. Clearly, neither section 314 nor the Compact as a whole was approved by three-fourths of the votes cast in the 10 February 1983 plebiscite and referendum.

My position, which is also the position of Palau's traditional Council of Chiefs, such Council being a constitutionally established advisory body to the President, is not new or unique. The United States Government, through the United States Office of Micronesian Status Negotiations, issued an official position paper on 12 January 1983, less than one month before the scheduled plebiscite and referendum, where it stated:

> "The Palauan people have the right to declare their land, air and sea space 'nuclear free.' However, should they do this, they may not also have a relationship of free association with the United States, since, under free association, the United States would be solely responsible for all matters related to the defence of Palau."

That statement and numerous others make it clear that the United States agreed that there could not be a Compact of Free Association unless 75 per cent of the people voted in favour of it.

Unfortunately, our President and his Administration have chosen to ignore our Constitution completely. It is his position that the Compact may be implemented without section 314 since the Compact received a majority vote. With all due respect to our President, I submit that such a position is legal nonsense. In fact, our Supreme Court has already held, in a ballot case decided 11 days before the plebiscite, that:

> "Should the electorate pass propositions I (A) and I (B) by the necessary votes, it is inconceivable that the United States would disclaim obtaining what it clearly sought. Should either or both propositions fail, there is nothing for the United States to reject."

The upshot of the foregoing is that the Compact has not been approved and ratified. That will be established to everyone's satisfaction by the Supreme Court of the Republic of Palau. The question now is, where does that leave us?

There are many reasons why the Compact in its present form is not acceptable to the people of Palau. Some are obvious: some not so obvious. I need not dwell on section 314. In accordance with our Constitution, the people have overwhelmingly delivered the message that we do not wish to have nuclear and other harmful substances in Palau. We are a peace-loving people. We have tasted the horrors of war. In exercising our right to self-determination, we now choose not to be placed in a similar position again. We simply say this to the United States. Let us live in peace without becoming a military puppet: give us our right to self-determination and do not impose upon us the horrors and terror which may follow from the introduction of nuclear weapons into Palau.

The other reasons why the Compact in its present form is not acceptable to the people of Palau may be somewhat less obvious. In accordance with Article 73 of the United Nations Charter, the Administering Authority must recognize that the interests of the inhabitants of Palau are paramount and that, in ensuring the political, economic, social and educational advancement of the people, the Administering Authority shall always show "due respect for the culture of the peoples concerned". These guiding principles have not been followed in the Compact in its present form.

Culturally and traditionally, the traditional leaders of Palau — the Council of Chiefs — must be closely consulted on any issue as sensitive as the land use rights which are granted to the United States under the Compact. The land system in Palau derives from the traditional clan system. Our clan system is still strong and viable after several thousand years of experience. This explains why during the recent plebiscite five of the eight States in which the United States would have either exclusive or joint use of land, including the State of Koror, where over 65 per cent of all Palauans reside, voted against not only section 314 but also the Compact as a whole. Successfully to implement in Palau a Compact which gives the United States use of our precious lands, close consultation and agreement with our traditional Council of Chiefs is absolutely essential. As a practical matter, regardless of the assurances of the Palauan administration, without such consultation and agreement it will be impossible to implement and effectuate a Compact involving joint or exclusive use of land. The people and the traditional leaders will not stand idly by and permit their lands to be confiscated contrary to the constitutional safeguards which exist. Too much is at stake. Too much is inconsistent with the basic tenets of the United Nations Charter concerning "due respect for the culture of the peoples concerned". Until the United States recognizes and comes to grips with this basic point, there will not be a viable Compact of Free Association.

The traditional leaders of Palau do not believe that the United States has honoured its obligations under the Trusteeship Agreement to promote the economic advancement and self-sufficiency of the inhabitants of Palau. To this end, if a Compact is to be viable due recognition of this fact must be given and provisions in the area of capital improvement projects must accommodate this concern. Thus there must be a renegotiation with respect to that portion of the Compact dealing with capital improvement projects designed to create an infrastructure which will enable Palau to achieve economic self-sufficiency.

Let me say that the people of Palau welcome and embrace the concept of a relationshp of free association with the United States. The United States is our friend, and we recognize that. But the United States must realize that a commitment to a Compact will have a profound effect for many years to come. Accordingly we must exercise the utmost care in approving a viable Compact. Contrary to the last plebiscite, the people must be fully and impartially informed and educated regarding the choice they are being asked to make. It cannot and should not be thrust upon them. Instead, once a compact is negotiated that satisfies the elected Government and the traditional leaders, a slow deliberative process of fair and impartial education must be afforded the people. If this is done not in a political arena but rather in accordance with our customs and traditions designed to reach a consensus of the people, a true and meaningful relationship between our two countries will be the ultimate outcome.

Let us work together to bring about a lasting relationship between Palau and the United States that will survive even the difficult times that may have to be confronted. As a traditional paramount leader of Palau I ask the United States to open a dialogue which will be consistent with our customs and traditions. I ask the United States to understand our needs in this regard. I ask that it work not only with the elected Government of Palau but also with its traditional leaders in formulating a long-term, lasting and meaningful relationship between our two countries. I look forward to contributing constructively to such a process."

Another Palauan, Ms. Bernie Keldermans, also travelled the 10,000 miles from Palau to New York to address the Trusteeship Council in May, 1983. In an eloquent speech, she told the Council of her concerns and those of other Palauans about the proposed Compact of Free Association with its nuclear substances provisions. Ms. Keldermans was born and raised in Palau but educated in the U.S. She is now science coordinator for the Palauan elementary schools. An active Catholic, she is also a Councilwoman from Koror, representing over 1,000 people. She was a leader of the citizen's movement to prevent construction of a Japanese/American/Iranian oil superport which would have drastically altered the marine environment of Palau. She has been very active in defending the nuclear-free constitution of Palau since 1979.

"As a student I was taught that the U.S. stood for democracy and freedom. This is a lesson that has been taught to our people over and over for the past 30-some years. Our lives were changed by the U.S. My people believed the U.S. Government when they said they would liberate us. We trusted the U.S. Government. However, now, many years later we have learned through a painful process the true intention of the U.S. to use our lands for their own military and strategic purposes.

In the late 60's the U.S. Government took the first steps toward negotiating Palau's future. Saying it promoted the long-term goal of self-government, the U.S. encouraged us to write our own constitution. At this time we tried to apply what we had learned from the U.S. about democracy. Palau's constitution is perhaps unique because it was written by all of the people through a process of village meetings. This process allowed for widespread participation by Palauans in constructing this nuclear-free constitution.

Because I am a teacher I was very active in the process. I helped many people to understand the necessity of the constitution. You must remember that Palauans were not used to this form of government having always had our tribal leaders. But slowly our constitution evolved. One of the most important sections was the nuclear-free one. Palauans decided to ban the storage, transport and testing of nuclear materials on their land or surrounding waters.

Our constitution has been approved in three separate referenda by an overwhelming majority of the people. The first vote, in July 1979, was observed and approved by the U.N. Immediately after this first vote in which 92% voted for the constitution, the U.S. entered its objections and sought to invalidate the vote. It was then we first heard about the Compact of Free Association because we were told that our Constitution was not compatible with the Compact. But my people wanted this constitution because they drafted it themselves. They believed that they were following the democratic principles they had been taught by the U.S.

In a second vote Palauans turned down a revised constitution because the U.S. had succeeded in having the anti-nuclear clause removed. By the time of the third vote in July, 1980 the people of Palau were under extreme pressure from the U.S. to vote against the original nuclear-free constitution. But we were strong in our commitment. We were afraid of nuclear weapons. We have seen what happened in Hiroshima and Nagasaki and in the Marshall Islands. We did not want to make our island a target. We did not want our lands to be used to inflict harm on other peoples so again we approved the original constitution by 79%. The Constitution finally went into effect on January 7, 1981.

While we were voting on our constitution, the negotiations for this Compact of Free Association were taking place on a high government level without input from the people. Throughout the negotiations neither the U.S. nor our own government kept us infomed about the status and nature of the Compact. We heard nothing until we were told that the then President-elect had initialled the Compact.

Until August of 1982 when Ambassador Lazarus Salii signed the Compact, we heard no more news. We were then told in September that the plebiscite would be held in November, even though we had not even seen a copy of the Compact, which is a complicated legal document, hundreds of pages long.

In spite of the short time, the government started the required political education which was supervised by our Ambassador to the negotiations. Our people complained that someone who had run the negotiations could not be impartial about this education.

The Compact itself was written in English — a language not spoken by most Palauans. The translations were inadequate at best and incorrect at worst. Even so, the U.S. Government allocated $400,000 to educate 14,000 Palauans about the Compact. This money was spent on campaigns for the Compact by the government which included food and entertainment to encourage a pro-Compact vote. People were told that the Compact would not violate the Constitution and would provide Palau with money and independence. The people were taught to see "free association" as offering a magical freedom for our country. A "Peoples Fact Sheet" in Palauan and English was finally issued in January of 1983 in response to complaints by the people. Yet the information given only told the good points of the Compact, not the bad. This "Fact Sheet" never even mentioned any conflict between the Compact and our Constitution. My people never received adequate information and the majority did not know what they were voting on. The process was so that some islands had not even seen the Compact when they voted.

The vote on the Compact involved two parts. We had to approve the Compact and agree separately to the nuclear provision, Section 314 of the Compact. Our constitution stipulates that to change its anti-nuclear provision it is necessary to have 75% voter approval.

Before the plebiscite, Ambassador Zeder told our government that without the 75% approval, the Compact would be defeated. And this is what our government publicly told our people. However, the ballot question on the nuclear provision received only 53% approval which was not enough. As far as the people are concerned now, the issue of the Compact is dead, because the Compact and the Constitution cannot be reconciled.

The United States tells us that the conflict between the Compact and the Constitution is an internal problem and that we are responsible for reconciling the two documents. That is not what my people believe. They have clearly rejected the Compact, despite intensive pressure from the United States.

The terms of the Compact give the United States military access to one-third of our land to use for guerrilla training ground, and for port and airport facilities. The compact also denies us eminent domain on land and an enlarged exclusive economic zone in our coastal waters. Our land and our water are our only resources and are vital to our hope for a self-sufficient economy. We would also lose our sovereignty with the Compact as the United States will have the right to determine when our security was being threatened. Our only desire is to live our own life and determine our own affairs.

The United States is so concerned about its military options, it has steadfastly refused to accept the people's wishes. We have said no four times to the United States' nuclear intentions in four referenda in four years. When will we be heard? We have voted democratically and the United States must accept our vote. Does democracy apply only in the United States and not in Palau?"

PART II: THE EVENTS OF 1983

In July, 1979 Palau adopted its first Constitution, which proclaimed that Palau would be "nuclear-free". The United States informed Palau that its Constitution was incompatible with the Compact of Free Association and insisted that the Constitution be revised to conform with the Compact. The Constitution of Palau was revised and submitted to a referendum in October, 1979 without the "nuclear-free' clause. The people of Palau overwhelmingly rejected the revised Constitution. Thereafter, at a third constitutional referendum in July, 1980 the people of Palau overwhelmingly approved the original constitution, thereby making Palau the first "nuclear-free" nation in the world.

On August 26, 1982 the United States and Palau signed the Compact of Free Association. Since the Compact would allow the United States to introduce nuclear weapons to Palau for purposes of defense, Article II, Section 3 and Article XIII, Section 6 of the Palauan Constitution required that it be approved by 75% of the voters voting in a referendum. This constitutional requirement was clearly acknowledged and recognized by all officials of the United States and Palauan governments prior to the February 10, 1983 referendum and plebiscite on the Compact.

The February Plebiscite

Ambassador William C. Sherman, United States Representative to the Special Session of the United Nations Trusteeship Council requested the organization and dispatch of missions to observe plebiscites in Palau, the Marshall Islands and the Federated States of Micronesia on December 16, 1982. He took the opportunity to:

"outline briefly the events in the ongoing process of self-governance and self-determination under the Charter and the Trusteeship Agreement which have caused us to present this request . . .

Specifically, the Personal Representative of the President of the United States for Micronesian Status Negotiations signed documents known as Compacts of Free Association, together with a series of related agreements, with the President of the Republic of the Marshall Islands on May 30, 1982; with the chief negotiator for the Republic of Palau on May 30, 1982; and with the chief negotiator for the Federated States of Micronesia on October 1, 1982 . . . The signature of the Compacts made it possible for the four signatory governments to begin the process of public approval which the Compacts themselves envision. That process involves consideration of the signed documents by the government of each of the parties in accordance with its constitutional processes and submission of the documents to the electorate of each of the Micronesian jurisdictions in a plebiscite constituting an act of self-determination."

On December 20, 1982 Ambassador Sherman responded at length to criticisms of the proposed U.S. handling of the termination of the trusteeship:

"The Soviet Union has stated that it cannot support what it calls the "so-called" plebiscites. It contends that the United States wishes to give an "appearance of legitimacy" to camouflaged absorption of the Trust Territory into the United States. The Soviet Union is obsessed with the politics of decolonization and little concerned with the realities of self-determination. The United Nations traditionally recognizes three political options for a territory: incorporation into another nation state, free association with another state, and sovereign independence. All of those choices will be available to the peoples of Micronesia. There will not be any 'camouflaged absorption'. The voters of Micronesia will choose their own political future and would not have it predetermined; neither will the United States defile its own heritage by asking them to proceed in any other way . . .

It has been said that the plebiscite process is being rushed so as to confuse the people and secure political advantage for the United States. The political education campaign began in Palau on September 9, 1982. The plebiscite will take place in Palau on February 10, 1983. There will have been months of intensive, objective, media and person-to-person political education which will have taken place by the time the plebiscite occurs in Palau. That is no rush, no forced political decision.

A further misconception is that these elections are somehow taking place under the supervision of the United States Government. I would repeat that the plebiscites in Micronesia are to be organized, conducted and run by constitutional elected Micronesian governments, not by the United States."

Ambassador Sherman repudiated charges that the U.S. was planning to "militarize" the territory as "specious", arguing "If the United States had been interested in militarizing the Trust Territory, it would certainly have done so over the past 35 years, when under the terms of the Trusteeship Agreement, it had virtually unlimited authority. Yet we haven't. After more than a generation of U.S. administration, the only military facility is the Kwajalein Missile Range — which has a mere 30 U.S. Army personnel in residence and is otherwise completely operated by contractors. There are several 13-man civic action teams from the various services: one each on Truk, Ponape, Yap and Palau, with another to be assigned to Kosrae. And there's the Coast Guard Navigation Station on Yap, with about 20 men assigned. The Coast Guard is a branch of the Armed Forces at all times and a service within the Department of Transportation except when operating as part of the Navy in time of war or when the President directs. Might the United States militarize Micronesia in the future? The answer is no. The Compact and its subsidiary agreement are much more restrictive than the Trusteeship Agreement. We have reserved no rights in the Marshall Islands beyond what we already have at the missile-test range, which of course has no offensive or even defensive capabilities. We seek no rights whatsoever in the Federated States of Micronesia. In Palau, the smallest of the three jurisdictions, we have reserved contingency rights which we might one day exercise, but we have no present intention of constructing or plans to construct facilities in Palau."

In this same speech, Ambassador Sherman outlined his delegation's understanding of the import of the plebiscite ballot for Palau which concerned radiological, chemical and biological materials.

"The inclusion of the question and its wording are both products of agreement by the Palauan and United States negotiators. The Palauan Government considers the inclusion of the question, and its approval by a three-fourths majority, necessary under one provision of the Palauan constitution in order to bring another provision of the same constitution into conformity with the Compact of Free Association. The wording of the question on the ballot again was deemed appropriate by the executive and legislative branches of the government of Palau.

The so-called 'nuclear-free' provision of the Palauan constitution, if broadly interpreted, might have prevented the introduction or use of x-ray machines and radium-dial watches, and under any interpretation it would have placed limits on defense activities which the United States is committed, by the terms of the Compact, to carry out if the need should ever arise. Under the terms of the subsidiary agreement on this subject cited on the Palauan plebiscite ballot, the United States agrees not to test nuclear weapons and informs Palau that, in accordance with international law, it has no intention of disposing of or storing in Palau or its claimed territorial waters, nuclear wastes that, in accordance with its international treaty obligations and United States law, the United States has renounced the use of biological weapons and destroyed its stockpiles. Accordingly, biological weapons could not be stored in Palau. While the Compact and the same subsidiary agreement would permit the storage of nuclear or chemical weapons in Palau under specified conditions and rigorous safeguards, the Government of the United States has repeatedly informed the Government of Palau that no plans exist for such storage. The authority granted to the United States to bring such weapons into, or transmit them through, Palau is, however, necessary if the United States is to meet its responsibilities for the defense of Palau and its world-wide defense commitments, should the need to do so ever arise."

Ambassador Sherman assured the Special Session of the Trusteeship Council that "this aspect of the signed agreements, and the related question on the ballot, are being extensively treated in the Palauan Government's voter information program." The Ambassador of the United States insisted to the Special Session that:

"It has been a basic, agreed principle of the status negotiations that the peoples of Palau, the Marshall Islands, and the Federated States of Micronesia possess the right of self-determination and may choose independence or self-government in free association with another nation. If any of the peoples of Micronesia were, in the plebiscite, to reject the Compact of Free Association as negotiated by their representatives, the United States Government is willing to accept that decision and to negotiate an alternative arrangement with the government of the jurisdiction in question for the termination of the Trusteeship.

Let me point out that the Compact of Free Association is not irrevocable, that is, under the Compact's own terms the status provided thereunder may be changed at any time. The record of the political status negotiations clearly demonstrates that the United States had made no attempt to interfere with the rights of the people of the Trust Territory to self-determination. The Compact, if adopted, will conform with the recognized international legal criteria for self-determination through free association: the arrangement will be freely entered into through informed and democratic processes; the freely associated areas will have the right to adopt their own constitutions without outside interference; and the free association political status may be terminated at any time by any party."

The Palauan plebiscite had been set for January 11, 1983. As the Special Session was meeting, the President of Palau, Haruo I. Remeliik, cabled the United Nations to inform the Trusteeship Council that the date had been changed to February 10, 1983 "due to the necessity of further political education efforts." Meanwhile, the absentee ballots (a very important factor in the Palauan vote), dated January 11, had been mailed to Palauans living off the island. Many people watching the situation felt that even the February 10 date was too early. Sr. Barbara Glendon of the Focus on Micronesian Coalition of the National Council of Churches explained the problems surrounding the plebiscite in the first two months of 1983:

"As late as November, 1982, negotiations had been incomplete regarding some of the subsidiary agreements integral to the Compact. Then, in December, 1982, the Palauan Senate passed a resolution requesting that several of the subsidiary agreements be re-negotiated prior to the plebiscite. Thus, Palauan Vice-President Oiterong requested suggestions from the U.S. as to dates and venue for a meeting concerning the sections of the Compact targeted for renegotiation. It is not surprising then that in the midst of this call for re-negotiation and uncertainty about the content of some of the subsidiary agreements the word came from Palau that the political education program was going 'slowly and poorly'.

Although the timing of the ballot was controversial, it became clear that the wording of the ballot was even more controversial. Proposition I (B) stated: 'Before the Compact can take effect Section 314 under question (B) below must also be approved by at least seventy-five per cent (75%) of the votes cast. (B) Do you approve the agreement under Section 314 of the Compact which places restrictions and conditions on the United States with respect to radioactive, chemical and biological materials?' On January 21, 1983 a law suit was filed by local Micronesian citizens challenging the wording of the ballot. They maintained that Question I (B) was an inaccurate and misleading description of the agreement on which the people were voting. The fact is that the Palau Constitution totally bans these materials while Section 314 of the Compact actually liberalizes the prohibitions outlined in the Constitution and gives the United States authority to do things which are otherwise prohibited under the Palau Constitution . . . From where did the controversial language come? A cable, dated November 11, 1982, from U.S. Ambassador Zeder to Paluan Ambassador Salii contains the wording found on the ballot. Ambassador Salii testified for the court that the U.S. insisted that the wording contained in the cable be used. The court decided that the language must be changed and new ballots had to be printed and circulated, including some absentee ballots."

In his judgment in the Supreme Court of the Republic of Palau Trial Division in *Koshiba et al. vs. Remeliik et al.* (Civil Action No. 17-83), Associate Jusice Robert A. Hefner said on January 31, 1983 that the English version of the ballot did not comply with the relevant Palauan legislation authorizing the plebiscite and that the Palauan translation of Proposition I (B) of the proposed January 21 ballot " is inaccurate and inconsistent so that it misleads and confuses the voters who must rely upon the wording to cast their vote . . . This court finds that the plaintiffs will be irreparably harmed by being denied their constitutional right to vote if the ballot language were to remain as set forth by the defendants . . . Since the court finds that the language of the ballot will not allow a free and impartial vote, the court is compelled to enjoin the defendants from carrying out the referendum and plebiscite with the tainted language of the present ballot."

Judge Hefner specifically rejected the argument of the defendants that: "It is incontestable that the Republic of Palau is subject to a strategic trust agreement between the United States and the United Nations. The referendum and the Compact of Free Association *including the determination of the ballot language for the same*. . . .is an obligation and result of the United States under the Trusteeship Agreement. . ." (emphasis added by Judge Hefner.) The judge stated unequivocally that "This court finds no basis whatsoever for the proposition that the United States can dictate the wording of the ballot. . .the Preamble and Sections 411 and 412 of the Compact as well as the Constitution of the Republic of Palau and Republic of Palau Law No. 1-43 leads to the conclusion that this is a matter to be left to the constitutional and democratic processes of the Republic of Palau. The one possible exception is Department of Interior Secretarial Order No 3039 which states that after a law is signed by the President of Palau, the High Commissioner of the Trust Territory of the Pacific Islands has 20 days to veto or suspend the legislation. This was not done and the veto period has long expired." Judge Hefner found that the wording on the ballot papers for the January plebiscite had been dictated to Palauan Ambassador Salii by Ambassador Zeder of the U.S. Office for Micronesian Status Negotiations in a telegram dated November 11, 1982

It is significant that Judge Hefner made the following remarks on the interpretation of the results of the plebiscite about to be held. He noted in January, 1983 that:

"If 75% or more of the voters vote yes on the harmful substances proposition set forth in RPPL No. 1-43, the requirements of the Palau Constitution are met and the United States has its approval of Section 314 . . . It has been testified and argued that if the election proceeds with the wording set forth in RPPL No. 1-43, the United States will reject the plebiscite and referendum. This strikes the court as a strange and supportable position. Should the electorate pass Propositions I (A) and I (B) by the necessary votes, it is inconceivable that the United States would disclaim obtaining what it clearly has sought. Should either or both proportions fail, there is nothing for the United States to reject. The "rejection" threat is a *non sequitur*."

There was an attempt to clarify the language of the ballot, and the referendum and plebiscite were held on February 10, 1983. However, Ibedul Yutaka Gibbons (Palau's traditional paramount leader) still opposed the ballot, believing that the people were not adequately informed of the provisions of the extremely complex Compact. He announced his opposition to the Compact and urged the people to vote no.

Patrick M. Smith, Legal Counsel to Ibedul Gibbons, relates what happened in the February 10, 1983 vote:

"The ballot was divided into two questions — Question I (A) asked 'Do you approve of Free Association as set forth in the Compact of Free Association?' This Question received 62% of the affirmative votes in the referendum. Question I (B) asked 'Do you approve of the Agreement concerning radioactive, chemical and biological materials concluded pursuant to Section 314 of the Compact of Free Association?' This Question received 52% of the affirmative vote in the referendum. According to the official pre-plebiscite statements of the Government of Palau and the United States, if Question I (B) did not receive 75% of the votes, the entire Compact was defeated. Thus, many people voted in favor of Question I (A) to signify their approval of the concept of Free Association knowing full well that the Compact in its present form would not be approved or implemented, but instead renegotiated, because of the negative vote on Question I (B)."

However, the response of the Department of State in a February 18, 1983 press release defied the logic of Judge Hefner and of the Ibedul and his advisors:

"PALAU APPROVES FREE ASSOCIATION WITH THE UNITED STATES. Final unofficial results of the February 10, 1983 plebiscite in Palau represent a strong victory for the Compact of Free Association. In the yes-or-no vote, Palauans awarded the Compact of Free Association a mandate of better than 62 per cent. The voter turnout was very heavy, substantiating the high degree of support for the Compact in Palau.

Under the Compact, Palau will achieve its long-sought goal of full autonomy. The United States will assume the obligation and authority to defend the island nation. The Compact and its related agreements were negotiated over a fourteen-year period. Two other prospective freely associated states — the Marshall islands and the Federated States of Micronesia — will vote on the Compact in coming months.

The United States recognizes that the plebiscite is a valid and sovereign act of self-determination by the people of Palau. The Compact they approved defines their relationship with the United States, as well as their international political status after the present trusteeship is terminated. Now that the people and Government of Palau have approved the Compact, it must receive majority approval in both houses of the U.S. Congress.

The Palauan voters were asked other questions on the plebiscite ballot, including the political status they would prefer if free association were not approved. Slightly more than half of the vote chose to answer this question, which was optional. Here, the vote was about 56% in favor of a relationship with the United States closer than free association, and 44% in favor of independence. The ballot included an internal referendum question which asked the voters to approve a Palauan-American agreement relating to hazardous, including nuclear, substances. A majority — 53% — voted to approve this agreement. However, because of provisions in the Palau constitution, this, or a similar specific question, requires approval by a 75% margin before the Compact of Free Association can come into effect. This means that the *Palauan authorities must now devise an acceptable method of reconciling their constitutional provisions to comply with the mandate of the Palauan electorate for free association with the United States*. The United States has expressed its willingness to consult with Palau on this matter and awaits Palau's initiatives." (emphasis added)

Patrick M. Smith reports the Ibedul's reactions:

"Thereafter, on April 25, 1983, Palau's President announced that the Compact had been duly approved and he was appointing a task force for purposes of implementing the Compact. In response to this announcement, on April 28, 1983, Ibedul and six Senators filed a suit in the Supreme Court of the Republic of Palau naming the President, the Vice President, the Ambassador and the Minister of Administration as defendants. The suit primarily sought three things:

1. A declaratory judgment that the Compact in its entirety had been disapproved by the people on February 10, 1983;

2. A declaratory judgment that certain conduct of the defendants which led to numerous voting irregularities was illegal and that such defendants should be enjoined and restrained from such conduct in future elections; and

3. A personal judgment against the defendants to be paid to the National Treasury for the illegal misappropriation and expenditures of $230,000 of public funds used to wrongfully influence the outcome of the plebiscite and referendum."

The positions of the Ibedul and the defendants became polarized at the United Nations Trusteeship Council in New York in May, 1983. There the Vice President and the Ambassador of Palau joined the U.S. Ambassador William Sherman in confidently announcing to the UN that the Compact had been duly approved by the people of Palau and that it would soon be implemented. The Ibedul informed the United Nations that the exact opposite was in fact the case. He indicated he had instituted suit and that he was confident the Supreme Court of Palau would rule that the Compact in its entirety had been disapproved by the people.

In a written submission to the May, 1983 meetings of the Trusteeship Council, Professor Roger S. Clark, on behalf of the International League for Human Rights, explained why he considered the American response to be "a serious distortion of the result of the vote. The failure of Proposition One (B) to obtain a 75% majority means that the Compact package (which includes the Agreement between the United States and Palau regarding Radioactive, Chemical and Biological Substances) was defeated in the plebiscite." Professor Clark argued that the U.S. response in its February 18, 1983 press release was

". . . misleading in its reference to 'an internal referendum question which asked the voters to approve a Palauan-American agreement relating to hazardous, including nuclear, substances.' The 'Palauan-American agreement' that runs afoul of the Palau Constitution is, in fact, an amalgam of four separate but interlocking provisions of the Compact package:

§311 of the Compact
§312 of the Compact
§314 of the Compact
The Radioactive Agreement

The first two of these items were not mentioned in the ballot language, although they are closely related to §314, which was. The other two items were jumbled up in the ballot language.

§311 of the Compact deals with the "authority and responsibility" of the U.S. for the security and defense of the Micronesian entities. It refers, *inter alia* to the obligation of the U.S. to defend the entities "from armed attack or threats thereof as the United States and its citizens are defended." §312 provides that, subject to the terms of further agreements on defense facilities and operating rights, the U.S. may conduct within the entities "the activities and operations necessary for the exercise of its authority and responsibility" under the defense and security Title of the Compact.

The references in §311 to defense "as the United States and its citizens are defended" and in §312 to "activities and operations necessary" are broad enough, unless modified by other parts of the Compact, to support a wide range of actions by the U.S. with nuclear and other harmful substances. §314 of the Compact, which was being drafted during 1979 at the same time that the Palau Constitution was taking shape, was plainly designed to narrow some of the activities that the other sections might otherwise permit. It is, of course, like §§311 and 312, an integral part of Title 3, Article I of the Compact and all three sections must be read together in context. None of them stands alone.

The Radioactive Agreement is, I believe, best regarded as someting of a renegotiation of §314. In some respects it expands U.S. powers granted under §314; in other respects it reduces them.

The Palau Constitution prohibits things that §§311, 312 and 314 and the Radioactive Agreement permit. Hence, the starting point for the Palau electors must be what the Constitution allows. They refused to approve the modifications to the Constitution required by the present Compact package. This is why I am troubled by the U.S. offer described in the press Release "to consult with Palau" on how to "devise an acceptable method of reconciling their constitutional provisions to comply with the mandate of the Palauan electorate for free assocation with the United States." This language suggests that the Palauans must now find a way either to change their constitution or to try again to obtain voter approval for the Compact package as negotiated. This seems an unlikely possibility. One might have thought that the time is in fact ripe for the United States to consult with Palau in order to find a way to reconcile the status of free association apparently desired by the voters with the provisions of the Palau Constitution. That the voters feel strongly about their constitution is an obvious "given" in terms of what happens next.

The Palau Constitution

The relevant provisions of the Palau Constitution provide as follows:

> *Art. II, Sect. 3:*
>
> Major governmental powers including but not limited to defense, security, or foreign affairs may be delegated by treaty, compact, or other agreement between the sovereign Republic of Palau and another sovereign nation or international organization, provided such treaty, compact or agreement shall be approved by not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose, provided that any such agreement which authorizes use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require approval of not less than three-fourths (3/4) of the votes cast in such referendum.
>
> *Art. XIII, Sect. 6:*
>
> Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of not less than three-fourths (3/4) of the votes cast in a referendum submitted on this specific question.

There is some overlap between the two provisions and I am aware of no drafting history on why they appear in separate parts of the Constitution. [Further research indicates that Article XIII, §6 was the first of the two provisions to be agreed upon by the Constitutional Convention. The proviso to Article II, §3 was added later to eliminate any possible ambiguity about the method of adopting and implementing a Compact of Free Association which contained provisions relating to nuclear toxic chemical, gas and biological weapons. With the addition of the proviso to Article II, §3, it became clear that Article XIII, §6 and its over-ride procedure could not be avoided by means of entering into a Compact approved by a simple majority.] It appears, however, that Article II, §3 is primarily concerned with nuclear, toxic chemical, gas and biological weapons that might be brought in pursuant to an agreement with another state (especially the United States) or an international organization. Article XIII, §6 seems primarily concerned with restricting what the Palau government itself might wish to do domestically. Nevertheless, this latter provision catches within its orbit some activities such as nuclear power plants and the waste therefrom in which the United States might wish to be involved, and would, indeed have some right to do under §314 of the Compact. Whatever, the relationship of the two constitutional provisions, things are clear: (1) in some respects §314 and the Radioactive Agreement run afoul of both provisions; (2) both provisions may be overridden by 75% of the voters.

On a literal interpretation of Article II, §3 of the Constitution *the Compact itself* required a 75% majority. The State Department's "strong victory" of 62% was in fact a defeat. Surely, the words "any such agreement" in Article II, §3 refer back to "treaty, compact, or other agreement" (i.e., one which delegates major governmental powers). The Compact involves a delegation of powers of this nature and in §314, in the words of Article II, §3, it "authorizes (some kinds of) use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare." It follows that the *whole Compact ("any such agreement")* would be subject to the three-fourths requirement. The Radioactive Agreement, while not perhaps a delegation treaty, is closely related to one (the Compact) and it authorizes activities prohibited both by §314 and the Palau Constitution. It would therefore appear to require a three-fourths referendum majority also. Frankly, the argument that the whole Compact requires a 75% majority under the Constitution seems to me to be the only defensible one.* Why a different view was taken is beyond me. Be that as it may, as early as 17 November 1980 when the draft Radioactive Agreement was initialed, Article I of that document proceeded on the basis that there would be a separate vote on the Compact as a whole and on §314 and the Radioactive Agreement. The latter would require a 75% majority but no mention was made of the majority required for the Compact itself. In October of 1982 the Palauan authorities had apparently wavered some and were then contemplating only a single question on approval or disapproval of the Compact including the radioactive aspects. A 75% majority would be required by this single question. Ultimately, this course was not followed and two questions were asked.

The present discussion, it will be noted applies only to Article II, §3 of the Constitution. There is no reference to a Compact in Article XIII, §6. Insofar as the Compact encounters that provision, it appears necessary to vote only on those parts of the Compact package that contravene it, not the Compact as a whole. The problem is, of course, that because of the overlap of the two constitutional provisions it is impossible to separate out the extent to which each provision is violated. There is a further complexity: Article II, §3 refers to approval of the Compact by a 75% vote. Article XIII, §6 says that harmful substances are not to be used, tested, stored, or disposed of "without the express approval of not less than three-fourths (3/4) of the votes cast in a referendum on this specific question." The single question which would have been asked in the Palau Government's draft of October 1982 was apparently designed to cope with both constitutional provisions, to be both the approval of a Compact containing the provisions proscribed by Article II, §3 and the "express approval" of the "specific question" required by Article XIII, §6.

Personally, I believe that the argument could stop here. The Constitution required a 75% majority. Since that was not attained, the Compact was defeated. I do not see how the Palau legislature or executive could override the Constitution by presenting the issue in a different way. Nor do I see how the Palau and U.S. executives (in the Radioactive Agreement) could override the Constitution. An unconstitutional treaty is just that — unconstitutional."

Another eminent jurist, William J. Butler, Member of the Boad of Minority Rights Group (New York), Inc. and Chairman of the American Section of the International Commission of Jurists, told the Trusteeship Council on May 20, 1983 that:

"We are convinced, without any doubt, that the political will of the Palauans was fully expressed in 1979 when the overwhelming majority of Palauans, on at least three occasions, voted to reaffirm a nuclear-free constitution. This fundamental determination of the Palauans has also been recently affirmed in February of 1983 when the Palauans again repudiated the attempt to insert a new radioactive supplementary agreement, which was incompatible with the Palauan constitution.

Basic international rules and norms in international law, including the right of self-determination of peoples, provide that a constitution agreed upon at a constitutional convention participated in by all segments of the community becomes the supreme law of the land.

Accordingly, we find in the Palauan situation a direct conflict between Section 314 of the Compact of Free Association voted favorably on by the Palauan people and Article Two, Section Three and Article Thirteen, Section Six of the Palauan Constitution providing that in the absence of a 75% vote of the Palauans that the Territory of the republic shall ever be free of radioactive materials.

What we are concerned about most is that unreasonable pressures will be exercised upon the Palauan people to reverse this fundamental determination. Our concern is even more underlined because of the attempts to void this existing constitution by convening an illegal meeting of the Palauan legislature in 1979 under pressure by the Administering Power, an action which was totally rejected by the Palauan people in a plebiscite held on July 9, 1979 by an overwhelming vote of 92%. Later in February, 1983 another attempt to negate the nuclear free provision of the constitution was also rejected by the people.

Now no one can argue that it is improper for the Administering Power to take such steps as necessary to protect the security of the area and the security of the country of the Administering Power provided that these steps do not interfere with the right of Palauans to freely exercise their political will. This is the crux of our issue.

The Administering Power, pursuant to the Trustee Agreement in 1947, has undertaken to promote and develop self-government and independence within the Territory and to protect 'its people and the freely expressed wishes of the people's concern.'

"The constant pursuit through various techniques and other measures to bring about a change in the political will of the Palauans is contrary to established norms and standards not only of international law but of the bilateral commitments of the Administering Power set forth in the Trusteeship Agreement of 1947."

Modification of the Compact

In the face of the lawsuit initiated by Ibedul Gibbons, and these criticisms of its handling of the February 10 plebiscite results, the United States Office of Micronesian Status Negotiations re-opened negotiations with the Palauans in mid-1983. The Ibedul's legal advisor, Patrick M. Smith, explains what followed:

"On July 1, 1983, the United States and Palau executed a Treaty which substantially modified the Compact. They hoped the Treaty would render

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* There is nothing ambiguous about the language. Nor is the result absurd. I see no reason for applying any technique for documentary construction other than the plain meaning rule.

PALAU PLEBISCITE RESULTS
as certified by the President of the Republic of Palau

TOTAL BALLOTS CAST:		7,246	
Propositon One Question A.			
	YES:	4,452	61.44%
	NO:	2,715	37.37%
Proposition One Question B.			
	YES:	3,717	51.30%
	NO:	3,309	45.67%
Proposition Two			
	CLOSER RELATIONSHIP:	2,250	31.05%
	INDEPENDENCE:	1,800	24.84%
	NOT VOTING OR VOID:	3,196	44.11%

(Note: Percentages set forth above are based on total number of ballots and do not discount void or blank ballots. See below.)

Tabulations specifying numbers of blank and void ballots but discounting those ballots from percentage calculations:

Proposition One Question A.	YES:	4,452	62.1%
	NO:	2,714	37.9%
	BLANK:	43	—
	VOID:	36	—
Question B.	YES:	3,717	52.9%
	NO:	3,309	47.1%
	BLANK:	200	—
	VOID:	20	—
Proposition Two			
	CLOSER:	2,250	55.6%
	INDEPENDENCE:	1,850	44.4%
	BLANK:	3,178	—
	VOID:	18	—

Total Votes:

Proposition One, QuestionA.	7,167
Proposition One, Question B. (98% of those voting on I.A. voted on I.B.)	7,026
Proposition Two (55.9% of those voting on I.A. voted on II)	4,050

"Closer" as percentage of I.A. vote:	31.4%
"Independence" as percentage of I.A. vote:	25.1%

moot Ibedul's lawsuit. However, the Treaty missed the mark and only served to cause further division within Palau with many proponents of the Compact joining forces with the opponents.

On July 25, 1983, I filed a motion for summary judgment asking that the Court rule as a matter of law that the Compact had been disapproved in its entirety in the February 10 plebiscite and referendum. Two days later, on July 27, my boat was deliberately set on fire and totally destroyed.

On August 2, 1983 Palau's Ambassador Salii came to Ibedul requesting his assistance in persuading the Senate not to adopt a resolution which would reject the Treaty of July 1. Ibedul refused and instead sent me to the Senate to lobby for its passage.

On August 4, 1983 I argued the motion for summary judgment before Associate Justice Robert Hefner of the Supreme Court of Palau. He made an oral ruling on August 5, followed by a written opinion on August 6 that the Compact of Free Association in its entirety had been disapproved on February 10, thereby granting the motion for summary judgment. Additionally, he ordered the defendants to produce all documents relating to financial expenditures in the Compact educational process on August 15, 1983."

Judicial Denial of the U.S. Position

In his written opinion, Judge Hefner reminded the defendants that he had anticipated just such a situation in the January 31 decision about the wording of the ballot. Now, on August 4, 1983, Judge Hefner reiterated his point:

"To accept defendants' position would mean that the Compact is approved, but cannot be implemented or made effective until the Harmful Substances Agreement is resolved. In such event, the status quo would continue indefinitely until a new Harmful Substances Agreement is negotiated and appoved. If no such agreement is approved the political status impasse becomes the political status of the Republic of Palau and nothing is accomplished by the February 10, 1983 referendum and plebiscite. Such a result is intolerable and one which this Court will not decree."

However, the United States negotiators stuck to their post-plebiscite position that the two questions were severable. In a cable to Palauan Ambassador Salii, U.S. Ambassador Zeder argued on August 13, 1983:

"U.S. obligations as the Administering Authority under both the UN Charter and the Trusteeship Agreement require that the right of self-determination of the Palauan people be assured, for which purpose an opportunity had been provided the Palauans to exercise that right in the plebiscite. When such a plebiscite that has been freely and fairly conducted yields a reasonably strong, unequivocal majority vote indicating a preference for the negotiated political status, the right of self-determination can be deemed satisfied in accordance with the general international practice concerning such plebiscites. Accordingly, in this international context, the strong majority plebiscite results suffice for approval of the Compact. Section 412 of the Compact, in fact, reflects the understanding between Palau and the United States that such a majority is sufficient. Although the court's decision purports to invalidate the results of the Question A plebiscite, it completely ignores the clear statement on the ballot reflecting the equitable and internationally accepted criterion of majority approval being applied to that question. We therefore take the position that the decision does not establish the approval criteria applicable to the plebiscite, which was set out, in accordance with generally accepted practice, in the ballot and in Compact Section 412. In view of the above, the United States Government maintains, as it has since the February 10 plebiscite, that the people of Palau have approved the Compact of Free Association and its related agreements . . . the next step in the approval process for Palau is approval of the Compact by the Government of Palau in accordance with its domestic law."

Ambassador Zeder's selective reference to Section 412 of the Compact must be read along with Section 411 of the same document. Section 412 refers to the conduct of the plebiscite in Palau, the Marshall Islands and the Federated States of Micronesia. It states that "the results of such plebiscite in each voting jurisdiction shall be determined by a majority of the valid ballots cast in each voting jurisdiction." Section 411 states that the Compact "shall come into effect", *inter alia*, following "approval by the Government of Palau . . . in accordance with its constitutional processes." Palau's constitutional processes include the 75% majority requirement. Hence the Compact itself in Section 411 requires compliance with the 75% majority requirement so long as that remains the requirement of the Palauan Constitution.

Patrick M. Smith, the Ibedul's legal advisor, recalls what happened the day after this cable was received in Palau.

"On August 14, 1983, at approximately 7:40 p.m. a large bucket of gasoline was thrown through our bedroom window and ignited. My wife and I were able to escape only after running through a wall of flames. We left the island on August 16 for Manila with the intent of returning in two weeks. On August 17 a message was delivered to us that 'we were not meant to get out of the house and if we returned we would be killed.' The message was given to two American Associate Justices on the Supreme Court of Palau by an 'unidentified high-level Palauan official'."

Having routed the Ibedul's senior legal advisor, the proponents of the Compact and its Harmful Substances Agreement hoped to rush the agreements through the U.S. Congress by the end of 1983. The Federated States of Micronesia has approved the Compact by 79%. In September the Marshall Islands voters adopted it by 57.95%. But the replacement of James G. Watt as Secretary of the Interior by William P. Clark, formerly the National Security Staff director, in October surprised the Office of Micronesian Status Negotiations as much as other Americans. This shuffle did not, however, signify a change in U.S. policy, since as the *Washington Pacific Report* of October 15, 1983 noted, "Clark himself chaired the senior interagency group as Deputy Secretary of State at the outset of the Reagan administration, the group which sets the U.S. course in Micronesia."

That course did, however, take some twists and turns in late 1983. In October both Houses of the Palau legislature approved a new, shorter version of the Compact which would increase U.S. funding to $40 million per year, in addition to providing lump sums for capital improvements and investment. More importantly, the new draft changed the military provisions to provide that "Military forces of the Government of the United States may transit through the territorial jurisdiction of Palau *provided they [illegible] way violate the Constitution of Palau*." (emphasis added)

In reference to military land use, the new draft provided that "*Consis*[illegible] *the Constitution of Palau*, the Government of the United States may acquire defense sites or erect defense related facilities in Palau upon the approval of the Government of Palau." (emphasis added)

Ambassador Zeder agreed to negotiate on the basis of this new draft, and a ten-member Palauan negotiating team met with U.S. negotiators for a week in mid-November in Honolulu. The Palauans reported to their President during a week-long break that the U.S. seemed to have accepted the crucial elements of the new draft, although closer examination of the text agreed upon casts some doubt on this. Be that as it may, when negotiations resumed in Washington in late November, the Americans seemed to be under new instructions and would not resume discussion of the new draft. Despite repeated assurances that the Compact of Free Association would not be taken to the U.S. Congress in piecemeal fashion, by the end of the year the Office of Micronesian Status Negotiations was preparing to submit the Federated States of Micronesia and the Marshall Islands agreements for Congressional approval. Some Palauans perceived this as an attempt to isolate them, intimidating them by implying that more cooperative entities would get the better economic settlement.

Meanwhile the Right Livelihood Foundation of Sweden awarded the Ibedul Yutaka Gibbons its Peace Award in recognition of the struggle of the Palauans to maintain the integrity of their nuclear-free constitution. While the Ibedul was reassured of international interest in his people's struggle, he expressed pessimism about the long-term chances of the 14,000 Palauans holding out against the pressures and blandishments of the U.S. Some among his supporters have even begun to speak of forming an independence movement.

However, for the U.S. Congress to approve the proposed Compact of Free Association with the Republic of Palau in its present form would require the Congress to wittingly ignore the August 15, 1983 decision of Judge Hefner in the Supreme Court of Palau which "ORDERED AND DECLARED that the Compact of Free Association and its integral and subsidiary parts that include the Harmful Substances Agreement, were disapproved by the people of the Republic of Palau in the February 10, 1983 referendum and plebiscite." Clearly the present strategy of those promoting the Compact and its Harmful Substances clause is to undermine the will of the Palauan people by economic and political pressures, so that they either amend their constitution to permit U.S. introduction of harmful substances, or override their constitution by yet another plebiscite.

Whatever the outcome in the U.S. Congress, the form of future association between the Micronesian states and the U.S. must be approved by the Trusteeship Council and the Security Council of the United Nations. While the United States has close friends in Britain and France on the Trusteeship Council which give it a dependable majority, the U.S.S.R. has the power of veto in the Security Council to apply against any arrangement that is too crudely cobbled together. And as the last Trust (and only Strategic Trust) Territory moves towards its final stage under U.N. auspices, the issue is beginning to catch the attention of other concerned nations. Palau is a close neighbor of Papua-New Guinea; Prime Minister Michael Somare took the opportunity in his October 13, 1983 address to the General Assembly to signal his country's concern at the U.S. haste to apply cosmetic solutions to the old situation. Mr. Somare expressed concern "at the conflict between the Compact of Free Association and the provision in the Palauan Constitution forbidding the entry of nuclear weapons into the country . . . Failure to resolve it in a manner which takes account of the interests and rights of the Palauans would, we believe, amount to a break of international equity and order." Papua-New Guinea was one of the observers for the U.N. of the February 10, 1983 plebiscite.

The Prospect for 1984

A former Legal Counsel and United States Department of Defense Advisor to the President's Personal Representative for Micronesian Status Negotiations, Arthur John Armstrong, anticipated the dilemma now facing the United States in an article he published in 1981.

> "The United States Congress and the Reagan Administration must balance the negotiated tradeoffs against other political options to see whether in form and in substance the Compact of Free Association is a sufficient guarantor of political and economic stability in Micronesia and the Western Pacific. The world community in general, and the United Nations Security Council in particular, must determine whether self-determination has ensured the freedom of choice expressed in the plebiscite and whether the freely associated states in fact have the competence to participate in the international community. Finally, should free association under the Compact be implemented, all four governments will have the on-going responsibility to make the bilateral relationships work. The delicacy and discretion with which future relationships are executed will be decisive in shaping future United States-Micronesia relations and the future of the free association alternative in formulating superpower micro-state relationships."[91]

Another commentator agrees:

> "If there is a perception that the United States is attempting to avoid its legal obligations to the Trust Territory or to manipulate the termination process for its own selfish strategic or geopolitical ends, the associated states will arrive on the international scene stillborn."[92]

APPENDIX: Comments on "The Propriety of a State Less than Independence" from Statement by Roger S. Clark to Subcommittee on Small Territories of Special Committee on Decolonization of the United Nations, August 16, 1983.

1. *The propriety of a status less than independence.*

One of the basic objectives of the trusteeship system pursuant to Article 76 of the Charter is to promote the progressive development of the inhabitants of the territory "towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned . . ." Each of the other ten territories placed under the trusteeship system either became independent in its own right or was incorporated into an independent state formed in conjunction with another formerly dependent territory. Neither the Trusteeship Council nor the Security Council has ever had to make a definitive statement on the propriety of terminating a trust on the basis of a status short of independence, although the matter was considered during 1956-58 when such a status was considered for Togoland under French Administration. The Commission that examined the question then on behalf of the General Assembly did not rule out the possibility of such a status but expressed its view that the Togoland entity should have full powers in respect of its own constitution and power to terminate the arrangement unilaterally. U.N. Doc. A/3677 at para. 471 (1957). Ultimately Togo became independent and the question of another status was rendered irrelevant.

In the absence of clear precedent for a Trust Territory we believe that the Security Council should be guided by the principles developed by the General Assembly in dealing with the analogous question of the decolonization of territories to which Chapter XI of the Charter applies. The most relevant precedents, we submit, are General Assembly Resolutions 1514 (XV) and 1541 (XV), as applied particuarly to the decolonization of the former New Zealand dependencies, the Cook Islands and Niue.

Some language in General Assembly Resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples, may be read as suggesting that independence is the only way to terminate a dependent status in trust or in other non-self-governing territories. However, the International Court of Justice in its Western Sahara, (Advisory Opinion) (1975) I.C.J. 12 at 34, described Resolution 1514 as being "complemented in certain respects by General Assembly Resolution 1541 (XV)." The Assembly's practice with the Cook Islands and Niue suggests that it is appropriate to read Resolution 1514 in the light of the principles set out in Resolution 1541 which are meant to guide members in deciding when to cease transmitting the information called for in article 73 of the Charter, i.e., whether a particular territory is non-self-governing. That Resolution indicates that a non-self-governing territory may be said to have reached a full measure of self-government by:

(a) emergence as a sovereign independent state;
(b) free association with an independent state; or
(c) integration with an independent state.

So far as the Compact is concerned, it is apparent from its language that its intent is to establish a relationship of free association as defined in Resolution 1541 (XV). Principle VII of Resoution 1541 provides:

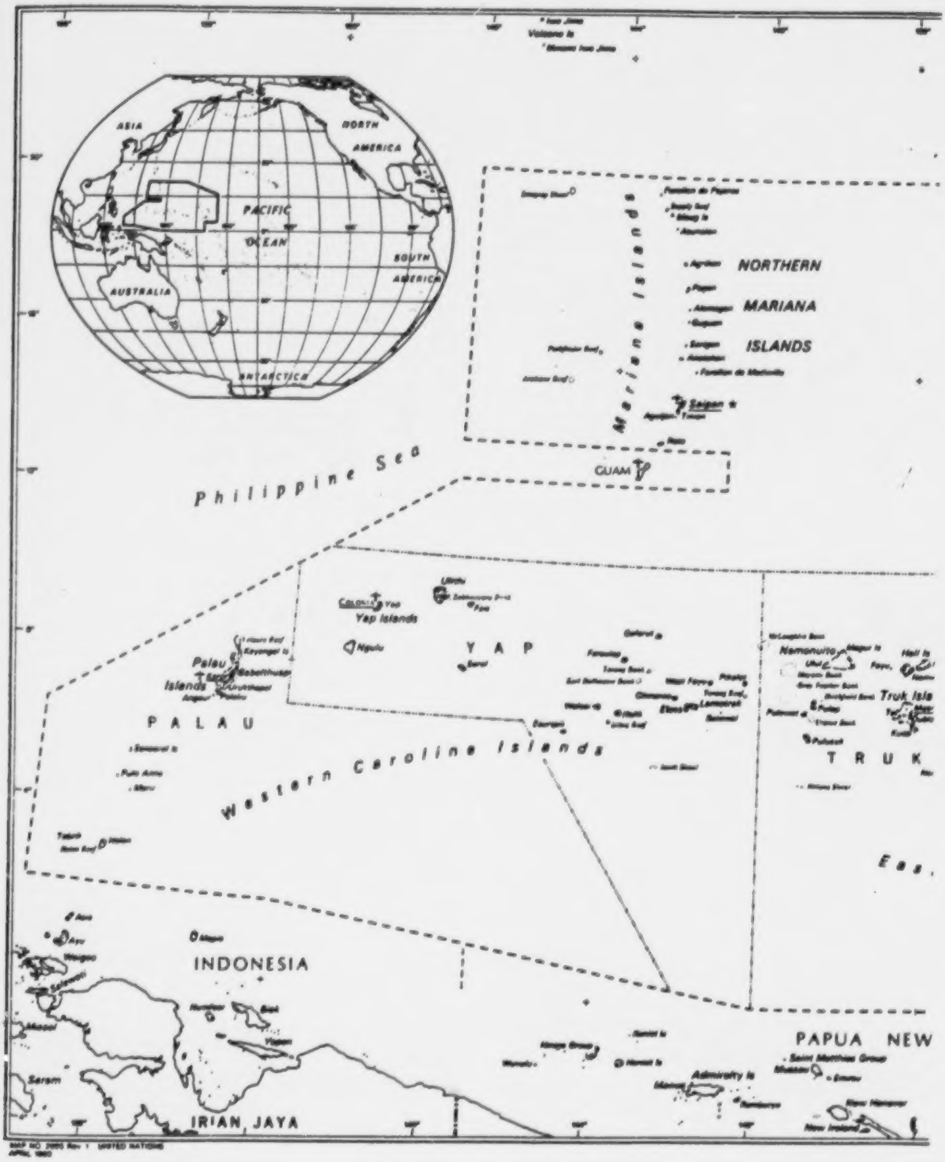
> (a) Free association should be the result of a free and voluntary choice by the people of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.
>
> (b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of free association agreed upon.

Principle VII speaks first of approval of the status as the result of a "free and voluntary choice" expressed through "informed and democratic processes". Whether the plebiscite in Palau was properly conducted is still the subject of considerable debate and a lawsuit in Palau. The rather bland Report of the Visiting Mission to Observe the Plebiscite, U.N. Doc. T/1851 (1983), finds some aspects of the matter to criticize but is on the whole favorable. We cannot discount the possibility that the litigation on the voting or the play of local political forces in Palau will lead to the holding of a new plebiscite there.

Then there is the requirement of Principle VII that the people of the freely associated state be free to modify their status through the expression of their will by democratic means and through constitutional processes. The power to terminate the arrangement unilaterally was stressed in the Togoland case mentioned earlier, and it exists in the case of the Cook and Niue arrangements approved by the General Assembly. It gives us cause for concern in the present case. The details of the aspects of the arrangement that trouble us differ as between Palau on the one hand and the Federed States and the Marshalls on the other. In the case of Palau, while the Compact says that it may be terminated unilaterally at any time, the most important military and security parts of the deal may not be terminated before a minimum of 50 years. In the case of the other two entities, the minimum life of the security provisions is fifteen years. Moverover, the Compact is accompanied by separate Mutual Security pacts between the United States and each of those two entities. The most significant provisions of these treaties, which come into effect on the termination of the Compact, are those which obligate the United States to defend the entities permanently and those which make permanent the Compact grant of what is usually called the United States' right of "denial." "Denial" is what is referred to in Section 311 of the compact as:

> the option to foreclose access to or use of Palau, the Marshall Islands and the Federated States of Micronesia by military personnel of for the military purposes of any third country.

The basic issue in terms of Principle VII is the effect (a) in Palau, of the 50 year life of a significant, and potentially burdensome, part of the Compact and (b) in the case of the other two entities, of the fifteen year life of the security arrangements accompanied by a continuation of part of those arrangements (denial) permanently. Do these provisions amount to an undue fetter on the power of the three entities to terminate the Compact of their own accord? The case is a close one. There is nothing in United Nations practice to indicate that the continued military presence of the former administering authority is in itself determinative of whether self determination has taken place. Nevertheless, the continued use by the United States of the Kwajalein missile range, and the agreement in the case of Palau that could lead to a substantial military presence, including United States occupation of about a third of the land on the largest island in Palau, raise some awkward questions.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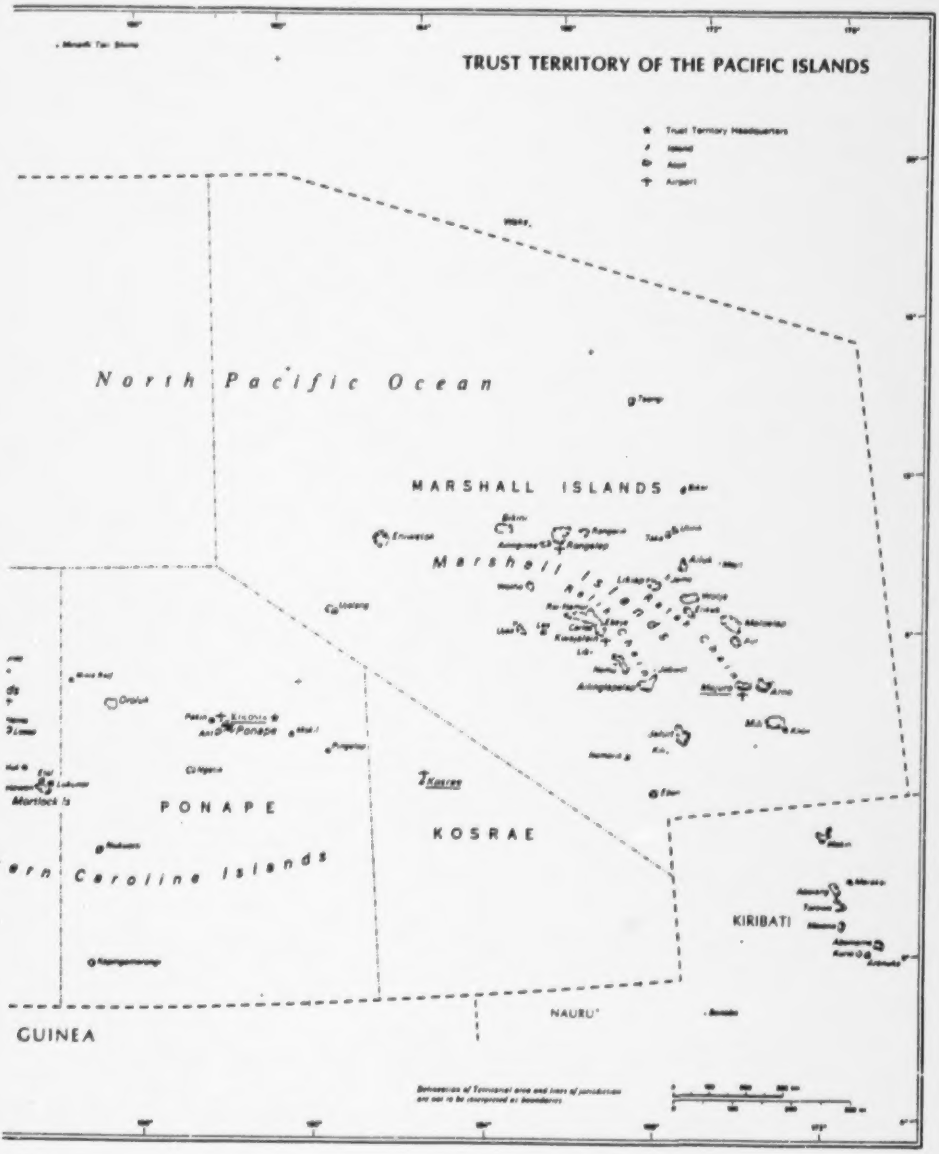
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Kapingamarangi
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ern Caroline Islands
Kosrae
KOSRAE
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NAURU
GUINEA

NOTES

[1] *Area Handbook for Oceania*, 1970, Supplement p. 429. Published by the American University. (Hereinafter cited as Oceania).

[2] *Ibid.*, p. 511

[3] Donald F. McHenry, *Micronesia: Trust Betrayed*, 1975, p. 7 (Hereinafter cited as McHenry).

[4] *Ibid.*

[5] *Oceania*, p. 498 and pp. 511-514.

[6] *Ibid.*, pp 514-515.

[7] *The Christian Science Monitor*, November 14, 1975.

[8] Elizabeth Anttila, *A History of the Trust Territory of the Pacific Islands and their Education*, pp. 90-91. (Hereinafter cited Anttila).

[9] *Ibid.*, p. 91.

[10] *Pacific Islands Monthly*, p. 369 (Hereinafter cited as *Pacific Islands*).

[11] Antilla, *supra*, p. 91.

[12] *Ibid.*

[13] *Ibid.*, p. 93.

[14] For further details on the labour traffic in the South Pacific, see *Decolonization* No. 12. Issue on Solomon Islands, at p. 3.

[15] Antilla, *supra*, p. 70; pp. 119-124.

[16] *Pacific Islands*, *supra*, p. 372.

[17] *Oceania*, *supra*, p. 499.

[18] *Pacific Islands*, *supra*, p. 372.

[19] The German annexation of the Marshalls was confirmed by the Anglo-German Convention of 1886 which partitioned several island groups in the Pacific between Germany and Great Britain.

[20] *Oceania*, *supra*, p. 499.

[21] Antilla, *supra*, p. 136.

[22] *Ibid.*, pp. 148-149.

[23] McHenry, *supra*, p. 5.

[24] David Nevin, *The American Touch in Micronesia*, 1977, p. 63. (Hereinafter cited as Nevin).

[25] Anttila, *supra*, p. 280.

[26] *Ibid.*, p. 275.

[27] *Ibid.*, p. 270.

[28] *Ibid.*, p. 65.

[29] Nevin, *supra*, p. 68.

[30] *Pacific Islands*, *supra*, pp. 370-375.

[31] Trusteeship Agreement for the United States Trust Territory of the Pacific Islands, Article 5. (Hereinafter cited Trusteeship Agreement).

[32] *Ibid.*, Article 13.

[33] *Ibid.*, Article 6.

[34] Joint Resolution of the United States Congress 18 July 1947; 61 Stat. 397.

[35] Executive Order 9875 (18 July 1947).

[36] *Trust Territory of the Pacific Islands Annual Report*, 1948, p. 112.

[37] Since 1967, the appointment of the High Commissioner of the Trust Territory of the Pacific Islands has been made by the President upon the advice and consent of the U.S. Senate. (Public Law 90-16, Sec. 2; 81 Stat. 15.)

[38] United States Code Annotated, 48 Section 1681.

[39] See *Decolonization* No. 13, Issue on American Samoa, at p. 6.

[40] Trusteeship Agreement, *supra*, Article 6 (1).

[41] Report of a Staff Study Mission to Micronesia, November 4 to December 1, 1978, U.S. House of Representatives Committee on Foreign Affairs, p. 8. (Hereinafter cited as *Staff Report*).

[42] *Oceania*, *supra*, p. 526.

[43] Between 1947 and 1950, the administering Power established 116 municipal governments, under the supervision of the High Commissioner, which were drawn up generally on traditional geographical political lines and had elective or traditional forms of government depending on the circumstances of each municipality. The municipalities remain the basic unit of government in the Territory today. Elective District legislatures were created for Palau in 1955, Truk, 1957; Ponape, 1958; the Marshalls, 1958; Yap, 1959 and the Marianas, 1962.

[44] Executive Order No. 26. See also Secretariat Order No. 2918 (as amended 24 March 1976) and Title 5, Section 1 of the Trust Territory Code of 1 January 1971 and amendments.

[45] *Official Records of the Trusteeship Council, Twenty-seventh Session, Supplement No. 2* (T/1582. (Hereinafter cited as Visiting Mission 1961). The Mission was composed of representatives from Bolivia, Belgium, India and the United Kingdom, who, as in all United Nations Visiting Missions, served in their personal capacity. The Mission visited the Territory from 8 February to 10 March 1961.

[46] McHenry, *supra*, p. 17.

[47] *Ibid.*

[48] *Ibid.*, p. 20.

[49] Secretarial Order No. 2882. Legislative Authority for the Congress of Micronesia. Trust Territory of the Pacific Islands, 28 September 1964.

[50] McHenry, *supra*, p. 89.

[51] *Ibid.*, p. 3.

[52] *Staff Report*, *supra*, p. 2. According to the Carnegie study, the United States administration of the Territory has been "confused and inconsistent" as a result of "interminable bureaucratic squabbles" and "a lack of attention" by the administering Power. In the study, a statement is attributed to former Secretary of State Henry A. Kissinger that since "there are only 90,000 people out there, who gives a damn?" McHenry *supra*, p. 12 and p. 87.

[53] *The Washington Post*, 9 May 1977.

[54] *Trust Territory of the Pacific Islands Annual Report*, 1978, p. 24.

[55] *Staff Report*, *supra*, p. 12.

[56] *Ibid.*, pp. 6 and 7.

[57] *The Washington Post*, 21 October 1979.

[58] *Ibid.*

[In a new referendum on 9 July 1980 substantially the same constitution as that approved on 9 July 1979 was adopted by 78 per cent of the votes cast. It came into effect on 1 January, 1981.]

[59] McHenry, *supra*, p. 58.

[60] *Ibid.*, p. 59.

[61] *Ibid.*

[62] *Pacific Daily News*, 16 July 1979.

[63] *Ibid.*, 4 June 1979.

[64] *Staff Report*, supra, pp. 9-10.

[65] *Official Records of the Trusteeship Council, Forty-third Session, Supplement No. 3*. Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands 1976, (T/1774), p. 37. (Hereinafter cited as Visiting Mission, 1976). The Mission, composed of members from the United Kingdom and France, visited the Territory from 5 March - 6 April 1976.

[66] *Staff Report*, *supra*, p. 4.

[67] *The New York Times*, 29 December 1978.

[68] *Ibid.*

[69] *Honolulu Star Bulletin*, 23 June 1979. Also Memorandum from Mr. Lee Hoskins, Chief, Micronesian Bureau of Investigation to Adrian P. Winkel, High Commissioner, 2 February 1979.

[70] McHenry, *supra*, p. 7.

[71] Nevin, *supra*, p. 25.

[72] *U.S. News and World Report*, 2 December 1974.

[73] *Staff Report*, *supra*, p. 6.

[74] Nevin, *supra*, p. 196.

[75] *Pacific Islands Monthly*, February 1979.

[76] The Northern Marianas has a land area of 47,105 hectares; Palau, 46,000 hectares; Ponape, 37,675 hectares; the Marshalls, 17,935 hectares; Yap, 12,115 hectares; Truk, 11,751 hectares; and Kosrae, 7,632 hectares.

[77] 1977 Annual Report of the administering Power.

[78] Covenant, *supra*, Article VIII. Tinian has a total land area of approximately 101.4 square kilometres; Saipan, 119.6 square kilometres.

[79] Francis X. Hezel, S.J. of Truk, *In Search of a Home: Colonial Education in Micronesia*, a pastoral letter provided by Father Hezel.

[80] *The Washington Post*, 22 April 1979.

[81] 1977 Annual Report of the administering Power.

[82] *Official Records of the Trusteeship Council, Fortieth Session, Supplement No. 2*. Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1973 (T/1748). The Mission was composed of representatives from Australia, France, the Soviet Union and the United Kingdom, this being the only Visiting Mission which included a member from the Soviet Union. The Mission visited the Territory from 2 February - 7 March 1973.

[83] Trusteeship Council Resolution 2160 (XLII). The vote was four in favour and one opposed. Also *Official Records of the Trusteeship Council, Forty-third Session, Supplement No. 2*. Report of the United Nations Visiting Mission to Observe the Plebiscite in the Mariana Islands District, Trust Territory of the Pacific Islands, June 1975 (T/1771). The Mission was composed of representatives from Australia, France and the United Kingdom. The Mission visited the Territory from 12 June - 21 June 1975.

[84] T/PV.1443.

[85] Resolution 2163 (XLIII). — See also T/PV.1459.

[86] *Official Records of the Trusteeship Council, Forty-sixth Session, Supplement No. 2*. Report of the United Nations Visiting Mission to Observe the Referendum in the Trust Territory of the Pacific Islands, 1978 (T/1795). The Mission was composed of representatives from France and the United Kingdom. The Mission visited the Territory from 28 June - 27 July 1978.

[87] *Official Records of the Security Council, Second Year, No. 23*, 116th meeting, 7 March 1947 at p. 476.

[88] *International Status of South-West Africa*, Advisory Opinion, 1950; International Court of Justice Reports (1950) p. 141-143.

[89] Roger Clark: "Self-Determination and Free Association.—Developments in the Trust Territory of the Pacific Islands" 21 Harvard International Law Journal (1980). [The correct citation is "Self-Determination and Free Association—Should the United Nations Terminate the Pacific Islands Strategic Trust?", 21 Harvard International Law Journal, 1.86 (1980)]

[90] McHenry, *supra*, p. 49.

[91] Arthur John Armstrong, "Strategic Underpinnings of the Legal Regime of Free Association: The Negotiations for the Future Political Status of Micronesia", in *Brooklyn Journal of International Law*, Volume VII, Summer 1981, Number 2 and p. 232-233.

[92] J. Ross Macdonald, "Termination of the Strategic Trusteeship: Free Association, The United Nations and International Law", in *Brooklyn Journal of International Law*, op.cit., p. 281.

The Reports already published by the Minority Rights Group are:

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Senator **Warner**. Thank you very much for your contribution.

We will now have Mr. Petersen, associate professor, department of sociology and anthropology, Baruch College, the City University of New York.

STATEMENT OF GLENN PETERSEN, ASSOCIATE PROFESSOR OF ANTHROPOLOGY, BERNARD M. BARUCH COLLEGE, CITY UNIVERSITY OF NEW YORK

Mr. **Petersen**. I have submitted my formal statement for the record, and I will give it to you in a much briefer form.

I am a professor of anthropology. In the course of the last 10 years, I have come to know, respect, and consider as dear friends the people of Ponape; and, as an American, who wishes to honor his understanding of what American means.

Some of my comments will no doubt trouble the Micronesian leaders who have worked for so long to negotiate this relationship with the United States I wish this were not so, but I stress that I testify as an American concerned with the actions of my own country, not as a lobbyist for Micronesia.

My perspective has been affected, however, by the views of the Ponapeans with whom I work. My remarks are based upon research I conducted on Ponape before, during, and after the 1983 Federated States of Micronesia plebiscite on the Compact of Free Association, and upon long-term ethnographic research I have been conducting on Ponape since 1974.

A majority of the Ponapeans and their legislature voted against the free association. They articulated their reasons for opposing this and favoring independence in its place. I have described the Ponapean vote in the plebiscite, and the context in which it took places, in a series of publications in an attached list. I concur with the judgment of the many Ponapeans who believe that they would be better served by independence. The basic arguments for this position are: No. 1, the Ponapeans' desires for genuine self-determination; No. 2, their economic dependency; No. 3, their military concerns; and, No. 4, my own moral questions.

There is no doubt that a vast majority of the Micronesian peoples wish to see an end to American trusteeship. Indeed, few Americans would deny that the trusteeship has been politically, economically, legally and socially oppressive.

On the other hand, America is quite willing to continue its trusteeship for as long as it deems necessary or convenient. U.S. veto power in the U.N. Security Council ensures that no one will interfere with American rule in Micronesia.

Given the Micronesians' fierce desires to increase their autonomy, they ultimately acceded to these fundamentally unacceptable terms. Said one Micronesian leader, explaining his government's new position: it was the best we could get under the circumstances.

One of the greatest of Ponapean values is "manaman," which can in this context be translated as authority or sovereignty. The plebiscite has no manaman.

One of the reasons the Ponapeans rejected the free association, then, was that for them it fell short of recognizing what we call inalienable rights.

Free association is especially in need of closer consideration when it is juxtaposed with the independence of the Pacific island nations to the south of Micronesia. Few of these islands have strong commercial economies, but none of them suffers the absolute dependency of Micronesia.

I speak finally as an educator, charged with teaching American students a vision of America. Because of my own education in American values led me to enlist in the military and to serve willingly in a foreign war that I supposed was meant to preserve those values, it is natural that my teaching continues to draw upon them.

I grew up believing, like most Americans, that the United States has no colonies. I believed, in fact, that we were opposed to colonialism. What an utterly absurd notion. Now I must explain to my students that the Sun never sets on the American empire.

I was schooled in many values, but it now seems that my real moral education took place in Micronesia. The Micronesians voted for free association because they had no other choice; it was what the United States would allow them.

A genuine concern for the rights of the Micronesians, and a simple consideration of their recent history, should be enough to convince this body that it will be doing the Micronesians, and Americans, a great injustice if it merely confirms this affirmation of U.S. control over these islands and their people.

Let me suggest that the Senate would best serve the interests of Americans and Micronesians if it calls for Micronesian independence.

Thank you.

[The prepared statement of Mr. Petersen follows:]

TERMINATION OF U.S. TRUSTEESHIP IN MICRONESIA

Glenn Petersen
Associate Professor of Anthropology
Bernard M. Baruch College
City University of New York
New York, NY 10010

United States Senate
Committee on Energy and Natural Resources

I would like the United States Senate to consider seriously the historical meaning Micronesian Free Association holds for America. While this new relationship may seem to satisfy short-term strategic requirements, what does it say about our willingness to apply the political values we have always proclaimed for ourselves to people whose lives we have held in trust for the past 40 years?

I address you as a scholar who has devoted 15 years to the study of Micronesia; as a man who has in the course of the last 10 years come to know, respect, and consider as dear friends the people of Ponape; and as an American who wishes to honor his understanding of what America means. Some of my comments will no doubt trouble the Micronesian leaders who have worked for so long to negotiate this relationship with the U.S. I wish this were not so, but I stress that I testify as an American concerned with the actions of my own country, not as a lobbyist for Micronesia.

My perspective has been affected, however, by the views of the Ponapeans with whom I work. My remarks are based upon research I conducted on Ponape before, during, and after the 1983 Federated States of Micronesia plebiscite on the Compact of Free Association, and upon long-term ethnographic research I have been carrying out on Ponape since 1974. A majority of the people of Ponape State, and their Legislature, voted against Free Association. While doing so, they articulated their reasons for opposing the new status and for favoring independence in its place. I have described the Ponapean vote in the plebiscite, and the context in which it took place, in a series of publications (a list of which is attached). I concur in the judgment of the many Ponapeans who believe that they would be better served by independence. I shall put forward four basic arguments for this position: 1) the Ponapeans' desires for genuine self-determination; 2) their economic dependency; 3) their military concerns; and 4) my own moral questions.

1) Self-determination

No concept is more central to America's image of itself than that the power of government derives from the consent of the governed. The founding documents of our republic are built upon the assertion of a people's inherent and unalienable rights to determine how they should be governed. The Trusteeship Agreement that establishes the legitimacy of the American administration of Micronesia specifies that "the freely expressed wishes of the people" must decide their transition to self-government or independence.

There can be no doubt that a vast majority of the Micronesian peoples wish to see an end to American Trusteeship. Indeed, few Americans would deny that the Trusteeship has been politically, economically, legally, and socially oppressive. The Micronesians have been ruled arbitrarily by foreigners who to this day retain veto powers over their representative government. Economic development programs introduced into their islands have invariably failed. The Micronesians have been judged by a court system that is ultimately accountable to the U.S. Department of the Interior. The American presence in Micronesia has wrought important changes in education and health, to be sure; it has also been accompanied by rising alcoholism, crime, and suicide rates. It is no exaggeration to describe the mood in Micronesia as desperate: the Micronesians are desperate to regain control of their own lives.

The U.S., on the other hand, is quite willing to continue its Trusteeship for as long as it deems necessary or convenient. U.S. veto power in the United Nations Security council ensures that no one will interfere with American rule in Micronesia. This lack of urgency has permitted the U.S. to pursue a hypocritical policy as it negotiates with the Micronesians. While U.S. negotiators say that the Free Association agreement recognizes Micronesian sovereignty, every party engaged in the negotiatons admits, off the record, that the Micronesians were never free to refuse permanent U.S. military oversight in Micronesia. The several Compacts of Free Association specify that U.S. has the right, in perpetuity, to deny access to the area to all other powers. The FSM leadership resisted this arrangement for years, arguing that they had no right to make a permanent agreement that so curtailed the rights of their descendants. The U.S. simply waited.

Given the Micronesians' fierce desires to increase their autonomy, they ultimately acceded to these fundamentally unacceptable terms. Said one Micronesian leader, explaining his government's new position, "It was the best we could get under the circumstances." Crowed an American negotiator, (FSM President) "Nakayama had to eat his words." Historically, the FSM agreed to the permanent deniability clause of the Compact because it felt that it had no other choice.

I have charted this brief history because it is essential to an understanding of why the people of Ponape opposed Free Association in the 1983 plebiscite. Ponapeans are no less concerned with sovereignty and self-determination than are Americans. One of the greatest of Ponapean values is "manaman," which can in this context be translated as authority or sovereignty. At the time of the plebiscite the Ponapeans discussed in great detail the negotiations, the Compact, and the meaning of the vote.

"The plebiscite has no manaman," I was told. "In our relations with the U.S., we Micronesians have no manaman--we are not sovereign--and so we cannot negotiate for what we want. We have to take what the U.S. will give us." If the U.S Congress decides that it will not approve the Compact (and at the time of the plebiscite there were certainly no assurances that it would), it was explained to me, "then we Micronesians are back where we started: a Trust Territory. How can these negotiations have manaman if we are not recognized as having an inherent right to freedom; how can this manaman--this inherent right--be recognized if we are subject, ultimately, to the decisions of the U.S Congress?" Said someone else, "The U.S. continues to have the manaman. It is in control of everything. It shapes the form and the content of the negotiations. It has made the plebiscite suit its own needs, meet its own requirements. We Ponapeans have not established the terms--we have no manaman." Another continued, "We have not been able to negotiate as we wish to because we do not have the manaman--we are not sovereign. Our inherent right to independence has never been recognized and so the negotiations themselves have no manaman--no authority; they are not between equals."

One of the reasons the Ponapeans rejected Free Association, then, was that for them it fell short of recognizing what we call "unalienable rights." It is appropriate to note here that even though the Ponapeans are hardly in a position to contemplate a rebellion (they did rise against the Germans in 1910), their sentiments echo America's following the Revolution. When the Treaty of Paris was concluded, 200 years ago last fall, the British representative hoped to negotiate an agreement that would provide the Americans with domestic freedom while retaining British control over our foreign affairs and trade. Franklin, Adams, and Jay rejected it out of hand. While self-determination, sovereignty, and independence are often determined on the field of battle, the values that underlie them cannot simply be denied because a people are few in number or inhabit a coveted bit of territory. It is ironic that the British have subsequently been in the forefront of a decolonization movement that seems to have passed us by entirely.

2) Economic Dependency

Free Association is especially in need of closer consideration when it is juxtaposed with the independence of the Pacific island nations to the south of Micronesia. Few of these islands have strong commercial economies, but none of them suffers the absolute dependency of Micronesia. The history of U.S. activity in the Trust Territory is a steady progression of failed programs and increasing dependence. Nearly every report ever written about the U.S. in Micronesia highlights this economic disaster. Recent political events unveil the context for this debacle: need for the massive funding guaranteed by Free Association, and thus for Free Association itself, is the predictable result of the policies the U.S. has pursued in Micronesia for the past 25 years.

Central to the Micronesians' urgent wishes to end Trusteeship is the notion, which has evolved in the past 10 years, that political independence, rather than being a product of economic independence, is a necessary precondition for it. Many people now believe that a self-sustaining commercial economy will be possible only when the Micronesians have gained self-government.

This may be so. But a number of Ponapeans see something additional happening. Micronesian control of U.S. funding is in fact ambiguous. Much of the fiscal planning done in preparation for Free Association has been designed with the primary purpose of meeting the requirements of American agencies and auditors. It is not clear that the Micronesians will indeed be able to use the funds as they wish. Such skepticism is particularly called for when we remember that on Ponape, at least, Free Association is not understood to be a truly sovereign status, the Compact's wording notwithstanding.

More critically for the Ponapeans, control of this funding raises fundamental questions about the nature of the Micronesian federation. The FSM Constitution they ratified in 1978 stresses the coordinating--rather than directing--role of the national government. FSM planners, however, have insisted that because it is the national government that will be held accountable for the expenditure of the U.S.-supplied funds, the national government must have the final--that is, the directing and determining--say in how those funds are used. Many Ponapeans argue, therefore, that the national government's dependency upon U.S. funding will ultimately make it more responsive to the U.S. than to the people of Micronesia. The issue of economic dependency, then, increases Ponapean skepticism about self-determination. Given the course of events in recent Micronesian history, there is little reason to doubt the essential accuracy of their observations.

3) Military Concerns

The Compact of Free Association states clearly that there will be no military bases in the FSM without the consent of its government. Yet it was the military provisions of the Compact that most troubled the Ponapeans during the plebiscite. As one Ponapean explained, with U.S. bases already in the Marshall Islands and Guam and others planned for the Northern Marianas and Palau, the FSM is surrounded by the threat of war.

Most of the people of Ponape do not think that their island--or the rest of Micronesia--would be in danger of invasion if the U.S. gave up its control of the area. They fear, on the contrary, that it is the American presence in Micronesia that endangers them. It is precisely the permanent denial clause of the Compact that most disturbs them. The fact that the U.S. would not even consider foresaking perpetual oversight suggests to Ponapeans that its strategic interests in their islands are paramount, and that they will therefore be forever in danger.

Whenever Ponapeans discussed the Compact, in the days before the plebiscite, they struggled to interpret its complex language and the meaning of its provisions for the transit of American military aircraft and vessels. If the Americans are permitted any sort of military presence at all in Micronesia, some argued, it creates a threat. Others scoffed at assurances that the nature of modern warfare meant that they would be bypassed if there was a conflict. "If that is so, why do they claim that we have strategic importance?," some asked. "Who ever foresees a war ten years in advance? It's easy to say that that nothing will happen here, but saying it means nothing." One old man summarized a widely held view with terse eloquence: "We are like the bait on hook, caught between the fish and the fisherman."

Many Americans are puzzled by such fears, believing them greatly exaggerated. But we must never forget the Micronesians' experience of World War II. Many of its major battles were fought on their islands, in the waters surrounding them, and in the skies above them. Why? Because they had been occupied by the Japanese.

For Ponapeans, World War II is not some vague historical event, dimmed by time and distance. It was fought in the places where they still live. Its fury still echoes in their daily lives. When the Japanese, who brought the war upon the Micronesians, were driven out, they were replaced by another occupying power, one that aims to retain permanent control over their islands. Why, given their experiences, should the Ponapeans believe that the U.S. presents less of a threat to them than did the Japanese? Many Ponapeans suspect that Free Association is far more threatening to them than the independence they prefer.

The southwestern Pacific is dotted with independent island-nations. None of these has been invaded since achieving independence. The strategic importance of Micronesia is in fact the result of the American presence there, and not vice versa. One Ponapean critic of this policy framed his perceptions with bitter cynicism: "Of all the colonial powers that have ruled Micronesia, the U.S. is the most perfidious. The other regimes made no bones about it: their interest in Micronesia was self-interest and their policies were openly formulated to serve those interests. The Ponapeans thrived in opposition to them. The U.S. has steadfastly maintained that its primary concern is the Micronesians' welfare, while doing everything in its power to destroy the vitality of the Micronesian people. As for me, I would prefer an honest tyrant to this treachery any day."

4) Moral Grounds

I speak finally as an educator, charged with teaching American students a vision of America. Because my own education in American values led me to enlist in the military and to serve willingly in a foreign war that I supposed was meant to preserve those values, it is natural that my teaching continues to draw upon them.

I grew up believing, like most Americans, that the United States has no colonies. I believed, in fact, that we were opposed to colonialism. What an utterly absurd notion! Now I must explain to my students that the sun never sets on the American empire.

I learned the ringing phrases of the Declaration of Independence, the Constitution, and the Bill of Rights. I was taught that independence lies at the root of liberty, and that America defends the rights of all peoples to be free. Now I must explain that American strategic interests take precedence over the Rights of Man.

I was schooled in many values, but it now seems that my real moral education took place in Micronesia. The Micronesians voted for Free Association because they had no other choice; it was what the U.S. would allow them. Does this bring to a close a chapter of history Americans can take pride in? No, it does not.

If instead of offering the Micronesians independence--with the financial assitance necessary to compensate for the disaster the U.S. has wrought in Micronesia--the U.S. Congress ratifies the Compacts of Free Association, then it commits itself to abrogating a host of the moral and political values that it claims to uphold. A genuine concern for the rights of the Micronesians, and a simple consideration of their recent history, should be enough to convince this body that it will be doing the Micronesians, and Americans, a great injustice if it merely confirms this affirmation of U.S. control over these islands and their peoples.

Let me suggest that the Senate would best serve the interests of Americans and Micronesians if it calls for Micronesian independence.

THE POLITICS OF EVOLVING CULTURES IN THE PACIFIC ISLANDS

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PONAPE'S BODY POLITIC: ISLAND AND NATION

by Glenn Petersen

This is a paper about politics and community on Ponape, in Micronesia's Eastern Caroline Islands, and an ethnographer's perceptions of the direction and rate of political change there. The people of Ponape have regular, often daily, interactions with their chiefs. Essential concepts of government—notions of a hierarchy of legitimate authority and a division of responsibility in community organization and action—are deeply embedded in Ponapean culture. Because of the island's rugged terrain and highly dispersed settlement pattern, it is more useful to conceptualize Ponapean communities in terms of families participating in joint activities than in simple territorial terms. These communities are simultaneously political units: they are the "sections" (Ponapean *kousapw*), the numerous small, minor chiefdoms which in turn constitute Ponape's five paramount chiefdoms (*wehi*). Ponapean politics, which permeate every aspect of life on the island, are fundamentally communal. I am, in this paper, concerned with exploring the ways in which the communal, face-to-face nature of indigenous Ponapean politics determines Ponapean responses to both the American-instituted system of bourgeois democracy on Ponape itself and the developing federal system that is intended to bind Ponape to the other islands in the Central and Eastern Carolines as the semi-autonomous Federated States of Micronesia (FSM).

My thesis is that apparent turmoil in Ponapean and Micronesian governments belies a more deeply rooted process of adaptation that will gradually reshape the structure of the electoral/bureaucratic system in a fashion that allows it to respond to the flow of Ponapean culture and politics.[1] The Ponapeans' strong sense of self-government, inherent in the communal nature of their polity, should ensure a successful adaptation of this new political structure; but this same sense of face-to-face politics may pose substantial problems for *inter*island relations. The authority of Ponapean leadership is tested continually within the community and derives its effectiveness from the well of trust that the responses to these challenges create. Where such constant interactions are impossible, as between distant islands, leadership may be perceived as imposed and therefore to be resisted.

I shall first outline the traditional Ponapean political system both in terms of its formal structure and its place in social life. Then I shall describe the American-introduced political system. An analysis of the relationships between Ponapean culture and politics, in the context of Ponapean responses to the introduced system, will follow; and, finally, the integration of Ponape into the FSM will be considered.

The Traditional Ponapean Polity

Ponape is by Micronesian standards a large island. It is roughly circular, with a diameter ranging from ten to twelve miles and an area of about 130 square miles. Its central peaks rise to 2,500 feet and draw approximately 200 inches of rain a year. Ponape lies 7° north of the equator and about 2,500 miles west-southwest of Hawaii. It is lushly tropical and fertile. It was first settled perhaps two thousand years ago. Its population was reported as 21,000 in the 1980 census, but I believe that this figure may be low by as much as twenty percent. The smaller figure was roughly the size of the island's population at first contact in the late 1820s. The introduction of new diseases, especially smallpox, reduced the population to about 3,000 in 1900, by which time the decline appears to have halted.

Ponapean oral traditions suggest that the island's polity has always been in flux, oscillating between eras of centralization, when a few large paramount chiefdoms controlled the entire island, and fission, when the island was fragmented into a number of smaller, autonomous chiefdoms. A series of political struggles occurring just before and after the early contact period left the island divided into the five paramount chiefdoms that it now comprises. Each of these is in turn made up of fifteen to fifty sections—the minor chiefdoms—with populations ranging from about twenty-five to two hundred. The paramount chiefdoms are each ruled by two chiefs: the Nahnmwarki, who is the paramount, and the Nahnken, who might be likened to a prime minister or, in Pacific terms, a talking chief. The paramountcies are controlled by matrilineages and matrilineal clans, and men with hereditary claims to titles work their way upward through a ranked system of titles, their progress being determined by community service; age; genealogy; political acumen; personality; and general skill in such things as cultivation of certain prestige crops (especially yams and kava), accumulation of traditional knowledge, and oratory. The several Nahnken and the men in the ranked lines of titles below them are sons of paramount chiefs or men in the ruling matrilineages; their political ascendancy is determined by what are essentially the same criteria. Though the sacred character of paramount chieftainship has declined in the course of 150 years of culture contact and a century of Christianity, these men are still reckoned to possess mana (Ponapean *manaman*), the supernatural force attributed to almost all Pacific island chiefs.

The sections are likewise ruled by two chiefs and their respective ranked lines of titles. Section chieftainships are generally controlled by matrilineages and have their own sources of mana. Advancement within the ranks of section titles works in much the same fashion as in the paramount chiefdoms. However, section politics operate on a more personal level and advancement within them is less predictable. Sections are the fundamental Ponapean communities, and most basic Ponapean social activities that reach beyond the level of individual families are organized within and through the sections. Ponapean social life is orchestrated by an unceasing round of feasting, and it is the presence of the section chiefs and other title-holders that bestows authenticity and legitimacy upon these events. Given the rapid pace of political, economic, and social change in contemporary Micronesia, it is easy to perceive traditional Ponapean politics as anachronistic and irrelevant, but my entire experience of Ponapean culture argues that it is this complex and multilayered system that continues to integrate and charge with meaning the lives of most Ponapeans.

Colonial History

The current status of Ponapean chiefdoms is as much the product of the island's colonial history as it is of its autochthonous culture. While they appear at first glance quite unconnected to the modern political scene, the chiefdoms in fact apprise us of both the shape of Ponape's body politic and the general nature of politics in Ponapean life; the system of electoral and bureaucratic politics that has been developed during the past thirty-five years of American administration is, after all, being introduced among Ponapeans, and it is their response to it that will ultimately determine the system's success or failure.

During the course of almost half their contact history, Ponapeans dealt with Europeans as political equals. Ponapeans took an active role in trade and in their own conversion to Christianity. When the Spanish attempted to establish control over the island in 1886, the Ponapeans resisted them, with marked success. It was not until the coming of the Germans in 1899 and the ill-fated rebellion of Sokehs chiefdom against them in 1910 that the Ponapeans found themselves no longer masters of their homeland. The Germans instituted coconut-planting schemes, corvée labor, and a system of land tenure that gave each adult male title to a plot of land, thereby depriving the chiefs of the single most important material manifestation of their power: their claim to land. The Japanese, who succeeded the Germans in 1914, began to develop Ponape as a plantation. Ponapeans were in a sense peripheral to this plan: most of the labor was provided by immigrant Japanese. In time the Ponapeans might have found themselves displaced (they certainly feared that this might be the case), but most Ponapean men received a Japanese education and some learned semiskilled trades. Japan's interest in its Micronesian territory was economically motivated enough to have resulted in substantial economic development of the islands even as the islanders themselves were relegated to marginal positions.

When the United States took control of what became the Trust Territory of the Pacific Islands, following World War II, economic development specialists urged that immediate steps be taken to revive Ponape's war-devastated economy. With a few minor exceptions, however, the islands were ignored for the next fifteen years, and the Ponapeans remained entirely subject to colonial rule. An islandwide legislature was established by the American administration in the early 1950s, ostensibly to begin the process of education for self-government specified in the United Nations Trusteeship Agreement. The quality of rule during this period depended largely on the personal qualities of the district administrators, who were able to govern quite arbitrarily. The United States wished to maintain the islands as a picket line across the Asian frontier, and its rule over them was tailored to this basic policy. While it is difficult for Americans to perceive their relations with small, foreign territories as anything but benign, it should be remembered that in 1950 there were many Ponapeans who had grown up in an essentially independent Ponape. The agonizingly slow pace of the negotiations for Micronesia's future political status and the entire tenor of America's attitude toward self-government throughout the 1950s, 1960s, 1970s must be kept in this perspective. And the utterly inept course of economic development in the sixties and seventies can only be understood in light of the United States' reluctance to permit Micronesians to govern themselves.[2]

Following its 1963 decision to co-opt Micronesia into permanently binding itself to the United States, the administration initiated a program of social, political, and economic changes throughout Micronesia. This included large expenditures on public health, education, and public works. The Congress of Micronesia, with delegates from each of the territory's six districts, was established in 1965. Large numbers of scholarships to American colleges and universities were made available to Micronesian students. A number of agricultural development programs were instituted. Most striking, however, were the budget increases, which leaped tenfold in a decade or so, pouring vast sums of cash into the territory, primarily in the form of salaries, and initiating import consumerism on a massive scale. By 1970, the United States felt that it had wrought enough changes in Micronesian consciousness to put forward its plans for annexing the islands. At the first round of the "Future Political Status Negotiations," held in Hawaii, a slightly rewritten version of Guam's "Organic Act"—the governance charter that spells out U.S. rule in Guam—was offered to the Micronesians. It was rejected, and the status negotiations evolved into a long-term consciousness-raising process. In 1975 the Micronesians held a constitutional convention, where they drafted a constitution for a united Micronesian nation. It was preceded by a year-long program called "Education for Self-Government," designed to provide the Micronesian people with some idea of the various status options they might pursue. A "referendum"—really an opinion poll—was held in July 1975. By this time it had become clear that it was highly unlikely that a single Micronesian nation would form. For a variety of reasons, too complex to be gone into here, the Trust Territory was on the brink of fragmenting into four polities, and the referendum demonstrated that there was no unified outlook on the future. Important in this context, however, is the Ponapean vote, which was overwhelmingly in favor of an independent, united Micronesian nation (Petersen 1975, 1979). Between 1975 and 1979, Ponape (and the other small islands in its vicinity) joined with Yap, Truk, and Kosrae districts to form the Federated States of Micronesia.[3] Ponape State was chosen for the FSM capital. Islanders now elect their own state governors, as well as legislators, and their representatives to the Congress of the FSM in turn elect the FSM president and vice-president. The Trust Territory's high commissioner, appointed by the U.S. president, retains veto power over all legislation; and the compact of "Free Association" with the United States, painstakingly developed over the course of many years, remains in limbo while the Reagan administration dawdles over its foreign policy formulations. Free association, which provides substantial internal autonomy, permits U.S. control of foreign and defense affairs in exchange for continued U.S. funding of the FSM economy. Given the massive infrastructure of education, public health, and public works establishments created in the last two decades and the complete absence of any export economy that might sustain them, the FSM finds itself critically dependent upon this external source of funding. The United States has managed—thus far at least—to create the economic dependency, if not the political subservience, it set out to foster in the early 1960s.[4]

This, then, is the historical context in which contemporary Micronesian politics evolve. The Ponapeans have at present what appear to be two entirely separate, parallel political structures, surmounted by a third. These are the traditional chiefly system, the electoral/bureaucratic system introduced by the United States and adapted by the Micronesians, and the U.S. government's ultimate control of the islands. The electoral/bureaucratic system both binds together the entire island, with its independent chiefdoms, and links the many islands of the Central and Eastern Carolines into the FSM.

It has been argued that the two parallel polities on Ponape are genuinely distinct, each calling for different political skills, techniques, and ideologies (Hughes 1970). I am not sure that this is so. As John Fischer (1974) has shown, the viability of the traditional chiefly system on Ponape has to some degree been ensured by the fact that the chiefs have not been placed between their people and the colonial administration. While U.S. administrators have always shown the chiefs some degree of respect, they have never been given any official governmental status as chiefs (though several have stood for elections) and have neither been able to enhance their status nor had it eroded by serving in a system of indirect rule. But this does not mean that the two political systems are truly separate and independent of each other. Both govern—in one fashion or another—Ponapeans, and both are responsive to Ponapean sensibilities. Both, then, entail Ponapean politics, and engagement in them is perceived in similar terms.

While the electoral/bureaucratic system is destined to survive in some form, since it is the system that binds Ponape together as a state and links the island to the FSM and the United States, from whence the island's income derives, it is not merely a new system imposed upon and replacing an older one. Because Ponapeans now have control over daily operations of this system, if not long-term decision-making powers, it is Ponapean sensibilities that shape the operation of this government. That is, the system functions within Ponapean culture, not external to it. And Ponapean culture applies fundamentally the same values and expectations to this system of rule as it does to its precursor.

The Culture of Ponapean Politics

It is my position in this paper that, for Ponapeans, politics entail a fundamentally different comprehension of the nature and exercising of power and authority than that understood in the modern Western intellectual tradition. There is nothing original in this contention. It has roots at least as deep as the opposition of some of Greek philosophy to

Platonic dualism and can be traced through what Isaiah Berlin (1976, 1980) calls the "Counter-Enlightenment" work of Vico and Herder. It certainly represents one current in the development of modern (post-eighteenth-century) anthropological thought. It is not my intention in this paper to argue this position from a philosophical or epistemological point of view, however. I am simply going to assert, on the basis of my two years' residence and participation in a Ponapean community (over the course of seven years), working as an ethnographer, that the fount of authority in a modern Ponapean community is the community itself, not a Machiavellian princeling, and that if one is to understand the operations of Ponapean politics one must understand how Ponapean culture establishes the contexts and forms in which individuals may tap and direct that power. I shall develop this theme in order to demonstrate how Ponapeans perceive and participate in the introduced electoral/bureaucratic system in their own terms, rather than in the political terms and categories of those from whom the system has been derived—that is, Americans. I am not, I should note, prepared to assert that what follows is the truth; it represents, rather, the direction in which six years of reflection upon, analysis of, and continued questioning about the nature of Ponapean social life have taken me. I am aware of exceptions to what I say. Any attempt to generalize has to skip over particulars—particulars which survive and argue contrarily nonetheless.

There are two countervailing strains in Ponapean culture, as it is realized in individuals: one toward hierarchy and one toward individual autonomy. Ponapean chiefs are respected and revered; they are, as I have already pointed out, imbued with mana, which comes to them through the continuity of their matrilineages. Ponapean chiefs are also characterized by their *wahu*—their "honor." *Wahu* can be translated literally as "valley" and refers to the gulf that lies between chiefs and the other members of the community. Yet, as one section chief reminded his people at a feast held to reintegrate the community after some of its people had split away to form a new section, "Everyone has honor . . . honor inheres in one as a human and as a member of a community . . . honor is like a fair wind: if it blows for us then we shall succeed" (Petersen 1982). The chief's honor, then, is not power. As one Ponapean aphorism has it, "*Ohlmen sohte kak mihmi pahn emen*" ("A man cannot live under another"); a second one states, "*Ngehi me kin kaunda paliwarei*" ("I am master of my own self.").

The entire shape of Ponapean culture and social life manifests these two interdependent pulls. Authority, though it draws upon rank, is by no means identical to it. Rather, individual authority derives from skill and ability and exists, in a sense, in its own negation. A politically effective man is characterized in most instances by humility. It is the wisdom or pragmatism of his suggestions, and not their force, that leads to action. The Ponapean language includes a complex honorific or respect form (*meing*) that is used in all formal settings. People of high rank are referred to and addressed in linguistic forms that exalt them, and all others are spoken of in humiliative forms. But in using this language, one always lowers oneself in self-reference; all speakers, even the paramount chiefs, refer to themselves in the humiliative form. In formal political situations—at feasts, for example—leaders do not assert themselves; the language does not allow for it. If orders are given, they are given by a lower ranking individual acting as the chief's representative, known as the *auwenwehi*—literally the "mouth of the chiefdom" (not "of the chief").

There is also a complex structure of secrecy woven into Ponapean social relations. Two of the cardinal virtues Ponapeans urge each other to practice are *kanengamah* and *mahk*. *Kanengamah* can be translated as "patience," but its meanings have to do with holding certain things back—in particular, emotions. *Mahk* may be translated as "reserve" or "self-containment," though it is ordinarily used in a transitive sense: "I will overlook your affront; I do not deign to have you see how this affects me" might be one way of describing how it is used. Both of these qualities concern the holding back of oneself, a major means of preserving autonomy. Because Ponapeans routinely refrain from divulging their sentiments, they have enormous individual freedom from any need to meet others' expectations of them.

Daily patterns of activity are also affected by this emphasis on secrecy. Competitive production of feast goods plays a leading role in political advancement, and an element of surprise is critical to successful participation in the feasting. Ponapeans do not ordinarily enter upon others' land (openly, at least) except along recognized trails. Nor do they inquire of others about their crops or possessions. Given that most Ponapeans spend their entire lives within small, homogenous, and highly endogamous communities and thus know a great deal about each other, there is also a remarkable lot that they do not know about each other. Again, this secrecy serves to reinforce and protect personal autonomy. While gossip plays a major social role—as it does in every society—there is an explicit notion that a man's affairs are his own. All this is reinforced by the dispersed settlement pattern, the rugged terrain, and the dense vegetation. Ponapeans are physically as well as psychically separated from each other. Their lifestyle provides them with considerable interfamilial privacy.[5]

In response to these centrifugal forces is the ceaseless round of feasting that calls Ponapeans forth from their isolated farmsteads. Feasts are focused upon chiefs. Quantities of food and kava are brought together, possessed temporarily by the chief, prepared, and then redistributed. The symbolism of a feast has the chief at its center—sitting, ideally, on a raised platform and looking down upon the people working below him.[6] (So central is this raised position in Ponapean political symbolism that the general term for chiefs or high ranking people is *soupeidi*—"those-who-look-down.") The highest ranking chiefs may receive at these feasts considerable quantities of tribute which are not redistributed, though much—perhaps most—of what they retain is dispersed among their families, hangers-on, and the people who help them transport the goods home. It is not unusual for section chiefs, however, to contribute more to feasts than they retain in the redistribution.

One of my clearest recollections of my early encounters with the seeming contradictions of Ponapean political culture comes from a conversation I had with the wife of a man who was one of several eligible successors to a chief thought to be on his deathbed at the time. At one point in our talk she was praising the sensibility of American democratic politics. We, unlike the Ponapeans, she argued, did not foolishly have to give all that we possessed to greedy, demanding chiefs. A few minutes later she was maintaining that most of their community wanted her husband to be the next chief because of his generosity. She complained that her husband was an exceptionally generous man, who gave away all that the family possessed, and that Ponapeans expected great generosity of their chiefs. A bit more literal in those days than I am now, I attempted to show her the contradiction in her statements: chiefs who were on the one hand greedy, on the other generous. She did not understand my objection; nowadays, neither do I. Men who acquire, on Ponape, are equally men who distribute.

Because Ponapean chieftainship rests upon both achievement and ascription, there is a clear note of hierarchy even while there is continual economic leveling. Accumulation serves only as preparation for distribution. And in the same fashion, the honor accorded to chiefs is merely a reflection of the community's esteem for itself. Feasts are the product of community effort and are in fact conducted in a surprisingly anarchic fashion. Few formal preparations or assignments are made in anticipation of a feast. Though there is a master of ceremonies, he is merely a coordinator, or conductor, who establishes the rhythm, rather than a supervisor who assigns the tasks. At extremely large feasts, which draw hundreds of participants, many of whom are relative strangers, there may be more conscious efforts made at organization; but under ordinary circumstances feasts unfold by themselves. Each participant decides for himself or herself what to contribute and what tasks to undertake. And when, as is often the case, a family is holding a feast to mark a life crisis event—a death, a wedding, a journey, a graduation—it is the chief who must, by his obligatory attendance, serve his people as their figurehead. The chief's presence confers ritual status upon the event, though the ritual itself is not the chief's doing but the people's.

The decision-making and -enforcing powers of the chiefs are of much the same quality as the roles they play in feasting. The near-century of colonial rule has undoubtedly affected their powers, but it is difficult to determine just what degree of control nineteenth-century chiefs had over their subjects. If one takes the divergence between what Ponapeans today say about the nature of their political institutions and what the ethnographer observes and applies it to written accounts from the past, it may well be that Ponapean chiefs never had especially centralized control of their communities, despite their enormous ritual status—or so I am inclined to believe. The authority of section chiefs seems exceptionally vulnerable today. They are continually obliged to tread a very fine line between demanding too much participation in community activities, thereby alienating their people, and calling for too little, thereby allowing the section to slip into torpor and disintegration. Sections can and do split apart as a result of population growth and disenchantment with the chiefs. In *"One Man Cannot Rule a Thousand"* (Petersen 1982) I treat this process at monograph length. Paramount chiefdoms have in recent years had their boundaries frozen by the charters that have made each a municipality within the state, the FSM, and the Trust Territory, and the paramount chiefs are less threatened by secession. In fact, they may at times actually encourage fissioning among the sections as a means of thwarting the rise of especially successful leaders or communities who might threaten their own hegemony.

Paramount chiefs in general rule through their section chiefs. There is not a great deal of ruling to be done, of course. Most aspects of Ponapean life are of a familiar and repetitive enough nature that tasks get done as part of the flow of life, rather than in response to a system of orders. Nevertheless, ritual events, celebrations, and the general structure of status are hinged upon the chiefs, and instructions and orders are sometimes given. Individuals may be told what they are expected to contribute to certain feasts or to community efforts of one sort or another. But chiefs only occasionally make decisions on their own. Any sort of joint effort is preceded by discussions among holders of the highest titles. Some form of consensus—a reading of community opinion, in effect—is found. A formal announcement may sometimes be made: for example, each family is expected to contribute one pig, one kava plant, and one large yam to a specific feast. Or nothing formal will be said at all, since the decision is no more than a reflection of what community members sense is proper participation or a proper contribution and since a family's decision to participate is based on many factors.

Performance and participation cannot be directly enforced. Ponapean chiefs no longer have powers of coercion (if, indeed, they ever did). It is the system of titles—the formal, public manifestation of individual status—that ensures participation. In a general way, community service is rewarded by advancement in the title system; and the higher a man's title, the more is expected of him. There are individuals who seem to have little interest in advancement and, while they generally participate in community activities, they do not contribute much. These people are, however, in a definite minority and are frequently the targets of mild teasing and derision. Failure to participate in or contribute to community events is the most frequently—in fact it is practically the only—explanation given for the removal of titles. If a man or a family does not meet the standards set by the chief or community, titles might be taken back. Upon occasion titles are removed as a result of personal conflicts, I know, but this is not usually acknowledged; inadequate participation or tribute is invariably given as the reason. A title, then, is to a large degree a statement of one's status within the community. There are occasional exceptions to this, as when a title is removed because of personal conflict between a chief and a community member; I know of cases where this has occurred, and the status of the man who lost his title was not seriously damaged. But this happens when an individual's status is so well founded within the community that an attack by the chief is not by itself sufficient to detract from the community's regard.

What this all means is that the true locus of authority in Ponapean communities is the community itself. An able chief is respected and listened to, but he founds his authority upon his own ability to listen. If pronouncements are made, they are liable to fall upon deaf ears or meet considerable disagreement. A generous chief can make demands and expect a degree of cooperation; having known no truly greedy chiefs, I cannot simply assert that they are inherently ineffective, but I assume that this is why they are not often encountered. Ponapeans continually complain about their chiefs, but they also admit freely that their complaints have little significance: *"Pihl en pahn mweli,"* they say—"water under the boulders" which can be heard trickling but has no impact.

Ponapeans have, I believe, an enormous sense of controlling their own lives, precisely because there is no differentiated source of authority over them. They have a clear concept of hierarchy and speak of it often, but it is extremely difficult to find it embodied as authority. Ponapeans sometimes speak of things within their lives that cannot be located by an outside observer.

Recently, A. Bartlett Giamatti, president of Yale University, wrote that "the most practical part of the American soul is its ability to assert and live by principles" (1981). This strikes me as quite likely, since I often find myself bewildered by the Ponapeans' capacity to assert principles they do not live by—a trait which seems for them eminently practical. They assert principles of hierarchy and power, yet live with a high degree of personal autonomy. I would go so far as to suggest, speculatively and tangentially, that cognitive dissonance as it is known in American social psychology would be hard to discover on Ponape. It may well occur in other forms, but not as we know it, as a struggle to resolve variance between reality and principle.

The Ponapean Electoral/Bureaucratic System

It is within this context—that is, the simultaneous acceptance and rejection of a hierarchy of authority—that the evolution of a new political structure on Ponape must be understood. The Ponapeans, and the other Micronesian peoples, have in part taken for themselves and in part had thrust upon them a political structure that reflects several millennia of cultural development in Europe and America. The functioning of western bourgeois democracy, with whatever degree of optimism or pessimism one views it, presupposes a number of cultural traits. Some of these grow out of a long and complex scholastic, philosophical tradition. Others derive from an important historical precondition: the absolute authority of the state, a hierarchy of power that is real and effective as well as apparent. With significantly varying degrees, modern democracies assume some popular control of government; but more critically, they assume governments that genuinely control the lives of the governed. Their religious, legal, economic, scientific, and artistic traditions all share this heritage in one fashion or another—a shared assumption of centralized, legitimate, and overarching authority and power. While earlier monarchy and autarchy have given way to bourgeois democracy, the quantum advances of modern technology have given contemporary governments far more control over individual lives than their predecessors ever had. It is a structure of government founded upon such presuppositions that has been introduced in Micronesia, where very different cultural underpinnings have evolved.

There is today on Ponape a system of government modeled after that of the United States. Within the five paramount chiefdoms and the island's one town—the municipalities—there are elected executives (the chief magistrates), justices, and councils.[7] There is a state legislature with representatives elected from each of the municipalities, a state court, and an elected governor. And there is the FSM Congress, the FSM president, and an FSM supreme court. The American systems of municipal, state, and federal governments and executive, legislative, and judicial branches are faithfully replicated. Constitutions and charters have been carefully deliberated upon by Ponapean and Micronesian delegations, but they have been drawn up, finally, by American (and, in a few cases, American-trained Micronesian) attorneys. The memberships of the congress and legislatures are subdivided into committees; the executive branches are composed of a multiplicity of divisions, departments, bureaus, agencies, and authorities. At almost every level of government and in almost every branch, expatriate technical advisors and administrators can be found. But in the main, the governments of Micronesia are staffed and run by Micronesians.

Ponapeans, as I have explained, have notions of authority and government that differ fundamentally from those of the people who initially devised this form of government; and their performance within the government is significantly different than that of the people who designed it. One hears on Ponape constant shrieks of rage from expatriates who are thoroughly frustrated by the Ponapean process of governing. From my perspective as ethnographer, it is easy to say, given my preceding arguments, that this is how it should be. I cannot deny the likelihood that, were I in an administrative or technical position in the Ponapean government, my own shrieks would be heard as well.

I am going to use two kinds of examples to illustrate the problems currently being encountered in Ponapean government. The first is the product of Micronesia's recent colonial history and presents immediate problems for the development of efficient, responsive government on Ponape. The second is of a much deeper nature and represents basic philosophical differences between Ponapean notions of action and American notions of principle. I will then go on to explore the wider implications these kinds of problems hold for the growth of an effective electoral/bureaucratic system of government and the ways in which I perceive the Ponapeans already at work adapting the actual functioning of their government to their own system of politics. Finally, I address an issue that arises out of this very process—the problem of federation among far-flung islands.

Present-day Ponapean government, and apparently Micronesian government in general, is confronted with an immediate problem of organization that is directly attributable to the American administration's colonial legacy. American rule in Micronesia has been for the most part autocratic. I am not necessarily charging it with heavy-handedness but pointing, rather, to the very centralized powers held in their time by the high commissioners and their district administrators. The various island legislatures acted throughout most of their histories as forums for discussion; district administrators always held veto power over them. The Congress of Micronesia was likewise subject to the high commissioner's veto. Budgetary decisions were entirely executive functions: in the early days it was a process of allocating scarce resources, while in more recent times it was the almost frantic search for ways in which to channel the flood tide of funding. As Ponapean political consciousness grew throughout the 1960s and 1970s, the Ponape District Legislature found itself at times functioning squarely in opposition to the administration. At other times it appears to have simply accepted its semi-impotent status and concerned itself primarily with internal matters. The legislature was in no way perceived by the administration as a partner in government.

At the same time, however, Ponapeans were entering the administration and learning executive tasks. By the early 1970s Ponape had its first Ponapean district administrator, and departments in both the Trust Territory and Ponape District governments were being headed by Ponapeans and other Micronesians. The training and experience they gained were in the administration's autocratic tradition. Governmental decisions came either from Washington, D.C., through the high commissioner's office in Saipan, or were made in the district administrator's office. These Ponapean administrators were, like their superiors, beholden to Saipan and Washington, not the legislature.

Today the Ponapean government is able to make many—perhaps most—of its own day-to-day decisions and has an important voice in long-term planning. But the government is staffed largely by men who were trained in the American colonial system and who continue to perceive government as essentially and primarily an executive operation. They have no experience in cooperating with a legislative body that is, technically, an equal partner. And the legislature, having a tradition only of opposition or irrelevance to the administration and receiving no sign or indication that the executive branch is interested in cooperation, continues to perceive itself as set against the governor's office and charged with striking an independent course. At a time when the government has been restructured to permit the cooperative effort absolutely necessary to the achievement of the creative solutions Ponape's immediate future cries out for, it remains instead bogged down in the unfortunate struggle that is part of America's colonial legacy.

Now, such competition for preeminence is a fundamental part of any dynamic political system that is not monolithic; the traditional Ponapean polity depends upon the ceaseless interplay between the two parallel lines of chiefly titles for its own vitality. But at present the Ponapean government is constrained by it. The ultimate solution to this dilemma lies, I think, not in a series of workshops to re-educate Ponapean politicians but in gradual absorption of the Ponapean *politique* into the relations among the various members of government, over the course of several elections. I shall return to this shortly.

The second example I offer is drawn from the experience of several American attorneys who have worked on Ponape in various capacities, including service as legal aid lawyers and legislative counsels. The American judicial system depends for its efficiency upon several factors that lie beyond the immediate courtroom environs. Two of these are precedent and appellate procedures. In general, courts are guided in points of law by preceding decisions, as spelled out in opinions and catalogued in law libraries. When a particular decision is disagreed with, it can be appealed to a higher court. Inherent in the appeals system, however, is the notion that there is an ultimate decision and that it, like all other decisions, will be based on precedent (unless it is a rare and significant case of reversing precedent, as in the civil rights decision that "separate but equal" was an impossibility).

Attorneys who represent Ponapeans in litigation report that, while the judiciary is frequently employed to resolve disputes, neither precedent nor an ultimate appellate decision are generally understood. I believe that this is so for many of the same reasons that I used in explaining the communal nature of the Ponapean polity. Perceiving no specific locus for authority but seeing it instead as existing embedded among actual relations between people, Ponapeans view decisions as being conditional and temporary, subject to changes in the individuals concerned or the relations between them. While Ponapeans rely heavily upon precedent in the conduct of traditional politics, there are so very many possible precedents for every situation that they are not seen as guides *to* action so much as explanations and justifications *for* it, after the fact. A decision is made on pragmatic grounds, then rationalized in terms of precedent. A legal decision that accepts the precedent as the *determining* factor does not make good sense in Ponapean. Similarly, because decisions are arrived at on pragmatic grounds that reflect the relations between the parties and between them and the adjudicator, there can really be no ultimate decision. As relations among the various parties and the conditions in which they exist shift, it is expected that the decision making itself must vary. Thus, losing a case on any given occasion does not logically imply that it might not be won on another occasion; and some Ponapeans return again and again to counsel, requesting that previously unsuccessful cases be taken up again. Law, like life, is expected to be flexible, to respond to immediate conditions, needs, and opportunities. A system of law, and of government, that asserts timeless principles is understood, but one that expects them to be lived by is not. Because authority is not alien, separate, or distinct but lies within the fabric of community life itself, Ponapeans at some level perceive themselves as being in control of their own lives; it is, I think, a sociocultural system that confers many individual freedoms yet works with great efficacy because this freedom depends upon the well-being of the community.

It is for these reasons that Ponapeans can operate within the introduced electoral/bureaucratic system with the same notions of hierarchy and autonomy that characterize the traditional system. While the dynamics of Ponapean politics frequently entail intense competition and continual jockeying for position, so thoroughly communal is the Ponapean polity that individual success is understood in terms of the community's benefit. Unlike true peasants, who have known generations of subservience to feudal powers and understand gain as ultimately benefiting someone else (a lord, a landlord, a tax collector), Ponapeans do not share in what George Foster (1967) has described as "the image of limited good," in which one man's gain necessarily implies another's loss; this is known in game theory as a zero-sum game. Cross-cultural research on fear of success among students, though not conducted on Ponape, provides me with some verification of this perception.

Susan Locke (1981), a psychologist, has compared students' responses on projective tests that asked them to complete stories about young people who have been extremely successful in their schoolwork. Among students at a large, urban, public university, many of whom are immigrants and the majority of whom are the first of their families to attend college, she found a consistent pattern of fear. These students perceived that in American society academic and business success implies a frightening degree of alienation from family and community. To be successful, they believe, is also to be alone; career success comes only at tremendous personal cost. The same test applied to Senegalese students from mostly rural backgrounds in Dakar, the capital city, provided strikingly different results. These students spoke instead of how their families and communities would celebrate their successes and imagined themselves as remaining well integrated in their societies. Locke's work expresses exactly the cultural context of competition and success that I perceive on Ponape. The communal nature of their political economy will in time, I think, shape the operation of the electoral/bureaucratic system and make it, eventually, a truly Ponapean system.

In the absence of an alienated or truly differentiated locus of authority, individual success does not come at the expense of other community members but rather includes them. Ponapeans perceive their chiefs as greedy because they are the focal points for the continual presentation of feast goods. But chiefs are, in general, men whose political advancement is in large measure determined by their contributions and who are expected, ultimately, to redistribute significant portions of what they have been given. In the traditional Ponapean political economy the items that confer prestige—yams, kava, pigs, and general community service—are not in scarce supply. Authority, then, does not come about by controlling access to these things but by producing and distributing them. Power cannot be obtained by cornering the market, as it were, because a leadership role exists only when members of the community see in it their own direct benefit. Status is accrued through skill and labor put to use for the community.

This is not meant to sound utopian. There are both important differences in status and in personal and family wealth in Ponapean communities. But the two exist in tandem in a fashion that differs fundamentally from the relation between the two in capitalist society. As Max Weber showed in *The Protestant Ethic and the Spirit of Capitalism* (1952), and as is clearly demonstrated by the philosophy and policies of the Reagan administration, there is in capitalism a notion that worldly success and wealth are in themselves manifestations of underlying virtue, that affluence in and of itself confers status. (The older the wealth and the less obvious the earning of it, the greater the status it confers; see Veblen's *The Theory of the Leisure Class* [1953]). On Ponape, accumulation that is unaccompanied by distribution is not understood. "*Kaidehn kowe mehn wai*" ("You're not an American") is a common retort to instances of stinginess. The notion that status implies generosity has profound effects upon the process of government on Ponape today, as does the understanding that personal relations determine principle rather than the reverse.

The Evolution of Ponapean Politics

As I have already stressed, most Ponapean social and political interaction takes place within the sections, the island's basic communities. Within the sections, the entire political process takes place on a face-to-face basis and authority is to be found within the group as a whole, represented but not controlled by the section chief. The sections are in turn bound together by the paramount chiefdoms. Prominent individuals within the chiefdoms—men with high titles—are well known not because of their titles but because of their participation in numerous feasts and other social activities. Their titles, though partly dependent upon hereditary status, are more directly the product of political acumen and activity. Ponapean leaders occupy intensely public positions and they channel, rather than possess, the authority of the community.

Because political communities are genuine communities on Ponape, political actions are based on interpersonal relations rather than abstract principles. This is possible—indeed, highly effective—because members of the community are acutely aware of who benefits from any given action and how they benefit. Members can choose to participate in or refrain from the community's activities. Politicians in the electoral/bureaucratic system understand this, and their own actions are informed by and predicated upon their membership in Ponapean communities and not upon the principles that underlie the original formation of the system. The faceless "equality-before-the-law" character of bourgeois democracy allows the individual neither any control over his or her own participation in society nor access to the benefits accrued by others. The outrage of expatriates at what they perceive as inefficiency, irresponsibility, and misallocation of funds is certainly justified from the point of view of principle. Ponapeans concur in these judgments. But for anyone for whom politics are communal, these are not shortcomings but necessary, efficacious, and beneficial political acts. I am keenly aware of the likelihood that this will be construed as criticism; it is intended as praise. The faceless, principled quality of bourgeois democracy lends itself readily to manipulation, legalistic maneuvering, and irresponsibility on a scale so vast as to threaten the existence of society itself. Because the lacework of authority in Ponapean communities cannot be accumulated and converted into power, the system is not a threat to itself. The apparent administrative failures portend, I think, a government that will be in no way as efficient as those of industrial societies; but for precisely that reason it will be far more responsive to the needs of the entire community. I preach. Ponapeans, unlike Americans, perceive their existence as primarily social and behave accordingly.

They do not suppose that some invisible hand shall magically make things right and they are, consequently, an eminently more pragmatic people than we who, living in vast and faceless societies, cast our fates to the wind.

This unwillingness to have abstract principle determine the quality of one's relations with others, even as a political system that assumes it is being implemented, is paralleled by the issue of force—the use of force—in Ponapean society. While there have been occasional and apparently isolated incidents of violence on Ponape, there does not seem to have been organized use of force by Ponapeans since the end of the ill-fated Sokehs rebellion in 1910. The Ponapeans warred among themselves and against the Spanish as late as 1898, but the technology and discipline of the Germans seem to have intimidated them. The Japanese are invariably spoken of as harsh disciplinarians and, though I have heard tales of minor harassment, I know of no organized resistance to them. The American period has seen the use of jail sentences and the development of an armed Ponapean police force. But for the last seventy years or so, there has been little or no application of legitimate force by Ponapeans against Ponapeans to implement government policy. Given the Ponapeans' emphasis on consensus and their enormous tolerance for deviance, this is not especially remarkable. One wonders, however, about the future. I am not prepared to attend fully to this issue in this context, but it is certainly relevant to the present discussion and demands some consideration.

There are a number of firearms in Ponapean hands today, despite gun-control laws. A few of these are light rifles used for deer hunting, but there are also handguns. I have no idea of their numbers or of the availability of ammunition for them. This is reminiscent of conditions early in the German administration. The Ponapeans in those days were heavily armed and the Germans were understandably concerned. Following a devastating typhoon in 1905 the island suffered a food shortage (one of the very few noted in Ponapean traditions) and the Germans offered to trade food for guns—a striking reversal of the dominant trade patterns on Ponape in the preceding century. The people of Sokehs chiefdom did not join the rest of the island in this exchange, and this in part explains the singularity of their revolt against the Germans five years later (Ehrlich 1978). Placed in this context, a gradual rearmament does not represent a departure from Ponapean tradition. If some Ponapean community or chiefdom or region were to object strongly to a government policy and refuse to comply, it is not at all clear how a Ponapean government would respond. In the long absence of a tradition of centrally implemented force, and given the strong pulls toward autonomy of individuals and communities, one perceives the low-key operation of Ponapean government as a politically as well as culturally determined course.

There are at present two Ponapean polities (along with that of the United States). I have argued that they are both responsive to a Ponapean *politique*, a set of cultural assumptions about the nature of the body politic and proper political conduct. While they function at present as different spheres, they are neither entirely distinct nor separate and are gradually becoming less so. The differences between the two are important, and each is partly responsible for the shape and effectiveness of the other. Though neither imposes a great deal upon the other, there is a form of symbiosis between them.

The great continuity of the traditional system of chiefly and communal politics is in some measure possible because chiefs and communities have not been responsible for modernization. They have not had to shoulder the burden of developing public health, education, and works programs, nor have they been charged with creating an export economy to produce foreign exchange. The most striking discontinuities and disruptions of life have been instigated by foreigners; and while Ponapeans and Micronesians have begun seriously to consider the roles that they themselves play in social disturbances, their communities, at least beyond the borders of the town, remain well integrated.

The electoral/bureaucratic system has functioned rather smoothly thus far because it is funded externally and has not had to make demands directly upon Ponapean communities. There has been no corvée, no conscription, no pillaging; and all but excise taxes are insignificant. The high level of wage employment has meant that young Ponapeans have had little reason to emigrate in search of work. The government has encountered little opposition not only because of its aura of colonial authority but because it has had to do little that has been construed as offensive.

Life in Ponapean communities has been significantly affected by changes in health care, education, communications, transportation, and economics. The same could be said, of course, of nineteenth-century Ponape. Ponapeans long ago became dependent upon steel tools, machine-made cloth, kerosene lamps, and a host of other simple necessities of daily life and have lost none of their Ponapean-ness for it. I would argue that these newer changes will likewise see the Ponapeans retaining their own distinctive culture. As they continue to take over local government, and as funding for that government continues to decrease, substantial adaptations must be expected. These changes will reflect the matrix of Ponapean culture in which they take place and will be responsive to the communal nature of Ponapean politics. Status and resources will be allocated in much the same fashion as they always have, or so I believe. But the very factors that hint at the strength and success of a Ponapean polity—that is, the face-to-face, communal quality of the island's politics—suggest problems for the federation of islands of which it is part.

The FSM's Body Politic

In July of 1981 the FSM Congress held a special session on Moen, an island in the eastern part of Truk lagoon and seat of the Truk state government. It is worth noting that one of the reasons congress left its usual quarters on Ponape was the thoroughly unreliable power supply on Ponape, where the electric generators were continually breaking down (and were thus serving as a major target of expatriate invective against the local administration). Without the use of typewriters, copying machines, and air conditioners, government was frequently brought to a halt. During the congressional session in Truk a delegation from the islands in the western half of Truk lagoon, an area known as Faichuk, asked the legislators to establish a new and separate Faichuk State within the FSM. Congress acceded, voting unanimously in favor of creating a new state; and Toshiwo Nakayama, the FSM president, was faced with his first major dilemma. Elected as a representative from Truk (and thence by the congress to the presidency), Nakayama had to decide, in simplest terms, between alienating a large portion of his own constituency by vetoing the bill and presiding over what portended to be the first stage in the ensuing fragmentation of the Federation into a host of tiny island entities. Several regions, including the Mortlock Islands, southeast of Truk, and the Central Carolines between Yap and Truk, had already indicated that they would demand similar status should Faichuk achieve statehood. Ponapeans, fearing that a second Trukese state within the Federation would give the Trukese a plurality in FSM politics, objected vociferously. Ponapeans were also quick to point out the direct economic consequences of such a political reorganization—consequences which were clearly at the root of the Faichuk move for regional autonomy. The FSM budget is divided, essentially, into four parts, to be spent in each of the four federated states, Kosrae, Ponape, Truk, and Yap. Each state is thus ensured funding for major capital projects such as hospitals, airports, power plants, water systems, harbor facilities, and roads. The Faichuk people saw the great bulk of Truk State's funding being directed to the state capital in Moen, in the eastern lagoon, and reasoned that statehood would obtain for them the development funding they felt themselves deprived of. The FSM legislation establishing Faichuk's statehood did not decide whether funding for the new state would simply be one-half of that currently received by Truk State or one-fifth of the entire FSM budget, an alternative that would substantially reduce the level of funding in the other states. The Faichuk statehood issue, then, was unpopular almost everywhere in the FSM; and the congress was widely perceived as having shirked its responsibility, sending a most critical and delicate matter on to a man for whom the decision would be even more awkward. Nakayama deliberated at length and consulted extensively with leaders throughout the FSM. In October he vetoed the Faichuk statehood bill, arguing that Faichuk lacked the economic and political infrastructure necessary to support statehood. In November he announced that Faichuk was to become "a showcase and an economic development model for the FSM" (*National Union* 11/15/81).

The people of Ponape viewed these events with great interest. In discussing the looming crisis, during the months of July–September 1981, the Ponapeans repeatedly asserted two positions upon which most seemed to agree. The first was that Ponapeans had no right to impose their own will upon the Trukese: if the Trukese wished to divide their state in half, that was their concern. The second was that the consequences of such a move would be grave enough to force Ponape to seriously consider seceding from the FSM. In Awak, a large, formerly independent community in northeastern Ponape, now a part of the Uh paramount chiefdom, the matter was given a distinctly local interpretation. Since 1900, when the depopulation trend reversed itself, the Awak population has grown steadily and the local sections have twice subdivided, creating three Awak sections. In 1979 one of these sections again split and the entire community was thrown into turmoil that was still being settled in 1981. (My *"One Man Cannot Rule a Thousand": Fission in a Ponapean Chiefdom* is a case study of this event.) The Awak people interpreted the Faichuk events in terms of their own local political processes. They recognized, on the one hand, the understandable drive for autonomy that characterizes communal politics such as theirs. "One man cannot rule a thousand" is how a section chief explained to me the fissioning process among Awak sections. Acutely conscious of their own colonial heritage, however, these people asserted on the other hand that this fissioning, the repeated breaking down of larger political bodies, would weaken the unity and hence the strength of the FSM in just the same way that fragmentation among the Awak sections has prevented Awak from reasserting its traditional independence from the Uh paramount chiefdom.

It is not unusual—in fact, it is quite common—to hear Ponapeans speak critically of themselves. They are, I think, far more conscious of the workings of their own polity than Americans are of theirs. This is not coincidence, of course, since Ponapeans are far more in control of theirs. But along with this wisdom comes a certain quality—I am not sure if it is skepticism or resignation or pessimism or realism—that recognizes what may be political shortcomings, given the modern world context. Entirely dependent upon external funding at present, the Ponapeans, I believe, have an understanding of how federation holds out for them a better bargaining position in their negotiations with the United States. Their notions about hierarchy inform them that a central government, representing many people and regions, has more status and more clout than a series of tiny island entities. But their simultaneous insistence upon autonomy makes the discipline and authority necessary to an even marginally effective central government hard to bear. As long as politics are conducted in a face-to-face, communal arena, leaders can be closely watched and the benefits of participation carefully adjudged. Decisions that must apply equally across hundreds or thousands of miles, however, are inherently abstract. How can one determine the equity of their implementation if it cannot be observed? How does one maintain a sense, at least, of control over a leader who lives on a distant island? Under such circumstances authority becomes of necessity differentiated and to some degree alienated—a separation, as it were, of mind and body. Ponapeans have grown ambivalent about federation. They have been criticized within the FSM for this, and they are themselves critical of their own attitudes. I cannot pretend to know the future, though I am hopeful that the Ponapeans will retain a strong enough sense of the long view to continue their early strong support for Micronesian unity. If, however, they do not, they should not be chastised, as they sometimes are, for not being politically generous enough to work with others. Ponape's body politic requires intense cooperation—authority exists for them only within a functioning community; it is the communal nature of Ponapeans' politics that makes them wary of governments of which they are not each equally a part.

NOTES

1. This paper is offered as an initial exploration of the topic, not as a set of final conclusions. I perceive it as part of a much larger work that seeks to encompass and describe Ponapean culture in its historical and social contexts in the late twentieth century; though the work at hand is intended to stand on its own, it should be understood that a great deal of research and analysis not presented here underlies what does appear.

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2. An economic and political discussion of Ponapean contact history in general and of the early American period in particular can be found in Petersen (1976).

3. The United States permitted (and, I believe, encouraged) the Mariana, Belau (Palau), and Marshall Islands each to break away from the rest of Micronesia and negotiate independently with it. Belau and the Marshalls are forming republics, while the Marianas voted to become a commonwealth of–that is, to be annexed by–the United States.

4. The history of U.S. rule in Micronesia is described by a Micronesian in Heine (1974), a former member of the U.S. government in McHenry (1975), and an American dissident in Gale (1979).

5. A full description of Ponapean secrecy and a discussion of the role it plays in Ponapean social organization is in Petersen (1978).

6. The strains toward autonomy and humility in Ponapean culture occasionally lead chiefs to abandon their stations and take seats for themselves among those actually preparing the feast goods.

7. Ponape State also includes a number of smaller outlying islands, with autonomous traditions, that are also chartered as municipalities.

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A CULTURAL ANALYSIS OF THE PONAPEAN INDEPENDENCE VOTE IN THE 1983 PLEBISCITE

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A CULTURAL ANALYSIS OF THE PONAPEAN INDEPENDENCE VOTE IN THE 1983 PLEBISCITE

Glenn Petersen

> When in my Prague apartment Milan Hubl held forth on the possibility of the Czech nation disappearing into the Russian empire, we both knew that the idea, though legitimate, went beyond us and that we were speaking of the inconceivable. Even though man is mortal he cannot conceive of the end of space or time, of history or a nation: he lives in an illusory infinity.
>
> People fascinated by the idea of progress never suspect that every step forward is also a step on the way to the end and that behind all the joyous 'onward and upward' slogans lurks the lascivious voice of death urging us to make haste.
>
> ...we must never allow the future to collapse under the burden of memory.
>
> *The Book of Laughter and Forgetting*
> Milan Kundera

On June 21, 1983, the Federated States of Micronesia (consisting of the Eastern and Central Caroline Islands) conducted a plebiscite. In most of these islands a "Compact of Free Association" with the United States, slated to replace American Trusteeship over Micronesia, was approved by an approximately 90 percent majority. The people of Ponape and the surrounding islands included in Ponape State voted against Free Association, however, and called instead for independence. While the margin of defeat was narrow in Ponape State as a whole (4,414 "No" votes, 4,116 "Yes" votes), the rural people of Ponape island proper (who make up the greater portion of the State's population) were strongly opposed to Free Association, defeating it by a two-thirds majority. Even in Kolonia town and the outer islands, where the measure was approved, the margin was much smaller than in the FSM as a whole.[1]

Free Association's unpopularity on Ponape contrasts sharply with the reception it received in the rest of Micronesia, and the Ponapeans drew criticism from other Micronesians, American observers, and even a few of their own leaders. They were accused of arrogance, ignorance, and selfishness. Yet the Ponapean call for independence, as singular as it may have been in its local context, forces us to confront the fact that it is the _Micronesian_ vote that is peculiar in the wider context of the Pacific islands community of nations, where the quest for independence has been the norm and a vote to prolong colonialism, though certainly not unknown, is the oddity. Indeed, the Ponapean vote should be seen as a proclamation in favor of independence, not as an opposition response. This being said, we are still faced with the question of why Ponape sought to resist American demands for continued control of Micronesia.

Attempts to explore, and to perhaps explain, the Ponapean vote for independence must take a host of circumstances into account. Major topics that must be addressed are Ponapean relations with and attitudes toward the U.S., Ponapean interactions with the rest of the FSM, and--the subject of this paper--the attitudes, perceptions, and desires that have grown out of autochthonous Ponapean social and cultural experiences. In an earlier paper, "Ponape's Body Politic" (1982b) I examined certain aspects of traditional Ponapean culture and politics that shape contemporary Ponapean participation in state and national political systems. In this paper I intend to deal specifically with the ways in which Ponapeans' understandings of their own culture and cultural-historical experiences led them finally to insist upon independence. I will address Ponapean-FSM and -American aspects of the plebiscite elsewhere.

The body of this paper has four parts. It begins with a discussion of Ponapean historical consciousness, and illustrates the characteristic habits of skepticism and analysis that shaped the Ponapeans' critical approach to the plebiscite. Next, I examine relevant elements of Ponapean culture, showing how a set of specific values were applied to the analysis of Free Association. I then describe the context of the vote itself, explaining how the *conduct* of the plebiscite served to confirm Ponapean doubts about what Free Association was likely to hold in store for them. Finally, I offer an interpretation of what Ponapeans saw themselves *for*--the way of life they quite consciously want to maintain a degree of control over. My intention is to demonstrate that the Ponapean vote was not an example of spur-of-the-moment opposition to the FSM or the U.S., but grew, rather, out of the course of the Ponapeans' history and their awareness of it.

In the lines from *The Book of Laughter and Forgetting* that preface this paper, Milan Kundera, an expatriate Czech, expresses ambivalence about the virtues of memory. I do not know whether he has come upon some general truth, nor do I really mean to take issue with him, except to suggest that even though Ponapeans are in some degree fascinated by the idea of progress, they most assuredly do "suspect that every step forward is also a step on the way to the end." It is memory, above all else, that the Ponapeans have chosen as their guide on the suspect route toward that end. This is not to suggest that the Ponapeans live in the past, but to argue that they reflect upon their past as they contemplate their future.

Kundera has also written that "the struggle of man against power is the struggle of memory against forgetting." Ponapeans have forgotten very little. Specifically, they have not lost sight of the meaningfulness of their own lives. They interpreted the plebisicite--in what it asked of them and in the way that it was conducted--as something intended both to deny the existence of and wrench away that meaningfulness from them. The people of Ponape permitted me to sit with them in the weeks preceding and following the plebiscite, as they discussed it amongst themselves. Over the course of the past ten years I have come to understand something of the context in which Ponapean discussions take place: what I report here is based on careful consideration of the contexts in which it was learned. It seems proper to note as well that when I describe what I believe are Ponapean analyses of events, I am doing so with the help of men and women who have read or who have had explained to them what it is that I write about their lives; they are my teachers and I hope I do them justice.

Ponapean historical consciousness

Ponapeans live in what appears at first glance to be a relatively homogenous society. The non-Ponapean immigrants on the island come from the surrounding atolls, and most speak Ponapean or related dialects as their first language.[2] Ponapeans, however, perceive a wealth of diversity on their island. In addition to differences between themselves and outer-islanders, they perceive quite significant variations among communities and especially among the five paramount chiefdoms (Ponapean _wehi_). While there is a notion of a shared Ponapean way or culture (_tiahk_ _en_ _Pohnpei_), Ponapeans are also quick to stress differences in the customs, habits, and attitudes characteristic of the various chiefdoms. John Fischer has suggested that in precontact Ponape "somehow the same concepts were used but...were given different emphasis in different groups" (in Bascom 1965:v) and David Hanlon (1983) notes their insistence that "_Pohnpei_ _sohte_ _ehu_"--"Ponape is not one." This diversity does not merely exist; it is celebrated. Ponapean emphasis on hierarchy is continually counterbalanced by an overriding theme of individual autonomy: the stress placed on diversity is critical to this process. Small but ubiquitous variations allow individuals and communities to assert their distinctiveness without threatening consensus, and as the uses of matrilineal clanship have grown circumscribed and lines of descent less remarked upon (Petersen 1982a) it may well be that territorial distinctions become increasingly emphasized.

Some of the distinctions between the chiefdoms that were seemingly on the wane during the colonial period have begun to reassert themselves. Disputes over borders flared up when attempts were made to map and finalize them. In the course of the Ponapean Constitutional Convention, meeting in 1983, one of the thorniest disputes had to do with the status of the island's only town. Kolonia was carved off from the Net chiefdom in the late nineteenth century and it now has the status of a chartered municipality. Ponapeans employ the same term , wehi, for both paramount chiefdom and municipality (they also use the term in referring to independent nations and other political divisions), and as the Ponape State Constitution is drafted the term's use has come into question. Because in Ponapean eyes the traditional chiefdoms are sovereign and imbued with spiritual, moral, and social qualities, it was decided that granting Kolonia (erected on territory that is historically part of Net) wehi status would effectively cleave it off from Net, something that the framers of the Constitution felt neither inclined nor empowered to do. The chiefdoms' sovereignty and singularity remain fundamental to the Ponapeans' understanding of their world.

Indeed, Ponapean accounts of their own history seem to emphasize distinctions in space over temporal chronology. Individuals, events, and changes seem to be linked together by variations in spatial organization. Events are marked by where they occurred, and epochs are known by names that usually refer to particular groupings of places rather than periods. Ponapean historical vision is enormously fluid--nothing is still, nothing permanent--but it is motion in space more than in time.[3] It is only the recent past, the colonial era, that shows a real emphasis on chronology. Ponapeans now speak of the Spanish, German, Japanese, and American eras. But even this episodic perspective focuses on externally-generated cues, colonial regimes; Ponapeans continue to conceptualize events in terms of where they take place, and thus remain acutely aware of local variations in historical process.

Observing that different parts of the island have experienced the impact of colonialism with differing intensities and consequences, some Ponapeans have become keen students of the processes of history. We might say that they have a well-honed historical consciousness. The most immediate example of historical interpretation entailed in the 1983 plebiscite is Ponapean understanding of Sokehs chiefdom's 1910 rebellion against the Germans. The Sokehs Rebellion has been written about a number of times (Ehrlich 1978, Hempenstall 1978, Bascom 1950); my purpose here is not to recount it but to examine the meaning it held for Ponapeans voting in the plebiscite.

At the time of the plebiscite a visitor to Ponape was surprised, and somewhat dismayed, to learn that the gravesite of the rebellion's executed leaders is untended and overgrown and that Sokehs chiefdom is now ranked last in the ritual ordering of Ponapean paramount chiefdoms. By Ponapean standards the chiefdom did not exist during the Sokehs people's exile in Palau and thus it is the most recently-established chiefdom. Ponapeans explained that even though the Sokehs Rebellion is reckoned an important event in recent Ponapean history, it is not thought of as a Ponapean struggle, but as an uprising of the Sokehs people. Sokehs had been acting as an independent, sovereign entity. The rebels, who are perceived as having acted in the finest tradition of the Ponapean warrior ethic, still command great respect, but it was their own fight, modern Ponapeans say, and they are not national heroes. It was this visitor's naive question about the rebels' modern status, however, that called forth from two older Ponapeans an incisive analysis of the rebellion, a discussion that an ethnographer comfortably acquainted with the facts of the event might not have otherwise heard.

The people of Sokehs rose while the rest of Ponape did not, explained these two students of Ponapean history, because of factors quite specific to Sokehs and its relations with the Germans. At the time of the rebellion only Sokehs had entered into a copra-production contract with the Germans. Demands for copra ran counter to the domestic needs of the Sokehs people, and their leaders found themselves in an untenable position. The rebellion was sparked in reaction to these conditions, with which only the Sokehs people were confronted. This account illustrates the facility with which contemporary Ponapeans observe the variable and idiosyncratic course of history. The people of Sokehs, not the Ponapeans as a general category, had specific pressures placed upon them by the Germans. In the absence of these pressures the rest of Ponape behaved one way, while Sokehs acted in response to its own circumstances.

The Ponapeans' tendency to view their past in spatial terms means that in effect they engage in the study of comparative history. They do not see history as unintelligible, nor as incomprehensible fate. What occurs in one place does not necessarily occur elsewhere, and what happens to the rest of Micronesia may not happen to Ponape.

Indeed, accounts of the Sokehs Rebellion offer us a concrete example of historical revisionism, the attempt to give to events in the past more current meanings. Accounts of the rebellion recorded in 1946 by William Bascom suggested that clan revenge for a beating inflicted by the Germans lay at the heart of the rebellion. Paul Ehrlich's richly detailed study in the early 1970s found that factionalism among the leaders of the paramount chiefdoms served to isolate Sokehs and edged it toward confrontation. The rebellion was more often a topic of conversation in 1983 than at any time in the preceding decade, and its implications for the Ponapean vote were manifest: Ponape must respond to current political and economic pressures with the decisiveness shown by the valiant warriors of Sokehs.

As I noted in the "Body Politic" paper, the Sokehs Rebellion marked a singular turning point in the Ponapeans' relationship to their own island. Not until the Germans forcefully put down the Rebellion did Ponapeans find themselves no longer masters of their homeland. I have suggested elsewhere (1984) that at this point Ponapeans realized that violent resistance was no longer an option open to them, and that their response was to adopt an explicitly nonviolent, informal means of preserving their autonomy. I call this response "cultural resistance." Similar methods have been described elsewhere as "everyday forms of peasant resistance" (Scott 1983). It is important to keep this history in mind while considering the Ponapean vote in the 1983 plebiscite, because the Ponapeans who voted against Free Association were drawing upon cultural and historical themes as they prepared to vote. The votes of many were framed as a form of resistance.

Perhaps the single most powerful example of the Sokehs Rebellion's relevance to the plebiscite appeared at the annual gathering of Ponape's Roman Catholic sodality. Held a few days after the plebiscite, the meeting's focal point was a full day of songs, dances, and sketches performed by various local Catholic congregations. One of the highlights was a production of the near-epic song and dance that relate the history of the Sokehs Rebellion. Evocatively performed by a congregation of Sokehs people descended from the rebels, they both celebrated their forebears' audacity and mourned Sokehs's sad fate.

While fragments of the song are occasionally heard, one rarely has an opportunity to witness a full-length performance of the dance. This one was done with gusto and skill, evidence of the dancers' months of preparation. They had in fact been rehearsing throughout the period preceding the plebiscite. The audience responded with thunderous acclamation. There had been a general sense of pride in the days following the plebiscite and the Sokehs dance simultaneously basked in and stirred up more of that exultation.

Ponapean cultural elements in the plebiscite

In *One Man Cannot Rule a Thousand* (1982c:122-23) I discuss complementary pulls between concepts of honor and humility in Ponapean culture. Both played roles in shaping Ponapean attitudes toward the plebiscite. Honor was the more visible and powerful of the values, but I shall begin this part of the discussion by examining Ponapean humility.

A critical part of the entire complex of Ponapean respect behaviors depends upon self-abnegation and -denigration. To decline a gift or portion of food by protesting that one is unworthy of it or to offer a gift with accompanying disclaimers about its inadequacy are basic aspects of Ponapean etiquette. Self-criticism is commonplace, and Ponapeans are frankly critical about the self-aggrandizing aspects of this self-criticism. Ponapeans laugh continually at themselves and their own shortcomings.

This ready self-criticism gives the Ponapeans a sharp perspective on their own responses to historical circumstance. This historical sense is overwhelmingly ironic. They laugh, for instance, at the cupidity of the nineteenth-century Ponapean who, according to tradition, exhumed the body of a European sailor in order to obtain his machine-made clothing, thereby setting loose a devastating smallpox epidemic. They laugh at the story of the Lepen Net, a nineteenth-century chief, who signed away to a trader a large portion of territory in exchange for a few empty glass bottles. A legislator tells me, tongue-in-cheek, that the only way to foster economic development on Ponape would be to chop down all the breadfruit trees, thus forcing people to for work a living. Someone else says that Ponape's troubles with development stem from not having suffered enough: just look at the Filipinos, he says. Because of their islands' tribulations they have learned skills that provide them with good employment when they come to Ponape.

A proverb, "Mwengki alasang kepin"--"The monkey imitates the captain"--may best summarize the Ponapeans' bemused perspective on the dangers of culture change. The proverb derives from an apocryphal story about a monkey who watches a sea captain shave. The captain spies the monkey and decides to play a dastardly trick upon him. As he finishes shaving he subtly flips the straight-edge razor over and runs its blunt side across his jugular vein. Then the captain sets the razor down and leaves. The monkey leaps from its perch in the trees, scampers over to the shaving kit, and grasps the razor. Fiddling before the mirror, the monkey mimics the captain's shave, then runs the razor across its throat. End of tale.

The story is a rather morbid commentary on the hazards of adopting habits of being that are not really suitable, and the monkey-mimickery epigram is used as a cautionary comment interjected into discussions about changes that are being contemplated. Many Americans who encounter change on Ponape, or who hear Ponapeans politely praising American customs, are prone to believing that Ponapeans want to become just like Americans. But Ponapeans are not Americans, Ponapeans say, and any attempt at such a transformation could be fatal.

Many Ponapeans ceaselessly examine changes taking place in their lives. When speaking publicly, chiefs invariably exhort the people to reclaim virtues that are thought to be disappearing. The plebiscite was in fact seen as a rare opportunity for Ponapeans to transform their concern about what they were allowing to happen to themselves into concrete action. Most Ponapeans do not think of themselves as mere pawns caught up in these unfortunate changes, but as responsible actors with decisions to make. Their ability to discern patterns and causes in history and to be critical of what they have done led them to approach the plebiscite as an event that would have profound consequences. Their self-critical predilections became analytical skills; their perceptions of how they had responded to earlier circumstances guided their visions of the future.

The facility with which Ponapeans analyzed the plebiscite and the likely consequences of Free Association was aided in part by the presence of the FSM capital on Ponape: their propinquity gives them ready access to gossip, rumor, and unpublicized facts about their national government. The impact of this access is enormously enhanced by another fundamental aspect of Ponapean culture, the daily, communal kava (sakau) rituals. Participation in kava rituals is flexible, and the continually varying composition of the groups serves to transmit information rapidly and thoroughly. Little transpires on Ponape that does not become a topic of discussion at kava.

In my earlier paper I emphasized the importance Ponapeans place upon being able to exercise direct oversight in their political afairs. The kava ritual is a fundamental part of this oversight. Determined not to be governed by a distant polity, and to take self-government seriously, Ponapeans strove to make good use of their proximity to the seat of authority. They examined the Compact of Free Association not merely as something that was going be done to Ponape but as a proposition calling for analysis and response. One of the basic points of departure for the Ponapean analysis of the Compact was the concept kopwel. There is no simple way to translate kopwel--its connotations resonate with the full complexity of Ponapean culture. A very rough gloss would be "to take care of," and it is often used as a reflexive, that is, "to take care of oneself." The concept is imbued with pride and a sense of propriety: Ponapeans deem it proper to expect that a person, family, or community be able to take care of him-, her-, or itself. To suggest otherwise may be construed as an insult. Thus an offer of assistance delivered, or perceived as being delivered, in a patronizing manner would be met with the statement, "Se kopwelikin kiht"--"We kopwel ourselves." "We can take care of ourselves, thank you," might serve as a free translation.

Kopwel can also connote "to protect, guard or cherish," as in the phrase "kopwelikin tiahk"--to protect or cherish Ponapean custom or culture, to guard the Ponapean way of being from the harmful pressures impinging upon it.

I first encountered the concept in an explicit reference to the Free Association. On the day of the plebiscite, a group of people preparing kava had begun discussing what each thought the notion of Free Association implied. One man said it meant that the U.S. was trying to kopwel the Ponapeans, to take care of them. "Yes," interjected someone else, "that's exactly what the U.S. is telling us. It's humiliating (mwamwahliki) us, insulting us, by suggesting that we cannot take care of ourselves, that we must be looked after." Said a third, "If a foreign nation offered to take care of the U.S., it would be terribly insulted; it would interpret it as a suggestion that it wasn't capable of looking after its own affairs." "Why should we be any less upset by the suggestion that the U.S. has to oversee our lives and affairs?," asked another.

Personal autonomy and independence are themes that appear again and again in an analysis of Ponapean culture, and kopwel is an aspect of these themes. Free Association was not judged as a purely bureaucratic arrangement--which is how most Americans seem to conceptualize it--but as a moral and philosophical issue.[4] Were the Ponapeans to agree to Free Association, many argued, they would effectively be denying personal and communal responsibilities, and thus lose their claim to manaman, a concept often translated as "power" but in this case meaning something much more like sovereignty.

One of the most thoroughgoing Ponapean analyses of their relationship with the U.S. came in just this context. In a later section of this paper I address some of the constraints that limit discussion of public events. At this point I simply note one consequence of these constraints: Ponapean etiquette--Ponapean notions about smoothing the flow of interpersonal relations--does not sanction a great deal of frank expression. Much commentary is oblique, and straightforward statements, are likely to be distrusted or even discounted. Kedrus, whose comments I am about to recount, is unusual in his outspokenness, in the strength of the opinions he voices, and in his willingness to be iconoclastic. In spite, or perhaps because, of this, his opinions are founded upon his own deep feelings about the quality of Ponapean culture and its rightful place in contemporary Ponapean life.

When Kedrus was a young boy, he said, his father was the hardest-working man on Ponape. But his father was like "*mwein America*"--the "American era (on Ponape)." "*Mwein America*", as he called his father, provided for Kedrus and his brothers and, as they grew and married, for their families. He fed them, clothed them, gave them a home. Kedrus spent his days sleeping and his evenings drinking kava with his friends. Then, Kedrus said, between the births of his third and fourth children he was struck by the realization that if "*mwein America*" died, so would he, his wife, and his children. He saw that he was quite incapable of supporting himself or a family.

Kedrus moved his family to another community, where he had access to unplanted land, and began farming there. For the first few years, before his tree crops began to bear, he had to work night and day, farming and fishing, in order to feed his family. As time went on, however, and his efforts succeeded, he began producing the surpluses necessary to full participation in the political economy. Then his father began sending his brothers to him, to ask for food, a pig, a kava plant, or for money. Others in the community likewise started making requests. This, Kedrus said, is when he became a real man, this is when he became independent. But in order to become independent, he continued, one must suffer as he suffered; it hurts when one takes on responsibility for oneself.

This is precisely the relationship contemporary Ponape has with the actual mwein America, he maintains. As long as the U.S. is supporting the Ponapeans they are not truly adults, they are children. (Many Ponapeans take pride in the number of mouths they can feed, and it is thus easy to understand why Kedrus's father was so willing to feed his grown sons and their families.)

In Kedrus's account the U.S. occupies a position identical to the father who keeps his children dependent. After he spoke of his father as "mwein America," Kedrus explicitly contrasted American rule in Micronesia with the other colonial regimes the islands have known. "Those other rulers were hard on us, but we Ponapeans thrived under that harshness. We had to take care of ourselves." He pointed to the Sokehs Rebellion as an example. The Germans beat the Sokehs people and the people fought back. If their rebellion was ultimately unsuccessful, it was nevertheless a powerful reaffirmation of Ponapean dignity. In the American period, by contrast, everything is free and easy. The Americans seem to make few demands and to give the Micronesians whatever they want. As a consequence, the U.S. is systematically sapping the the Micronesians' strength.

Then Kedrus delivered his coup de grâce. "Of all the colonial powers that have ruled Micronesia," he said, "the U.S. has been the most perfidious. The other regimes made no bones about it: their interest in Micronesia was self-interest and their policies were openly formulated to serve those interests. The Ponapeans thrived in opposition to them. The U.S. has steadfastly maintained that its primary concern is the Micronesians' welfare, while doing everything in its power to destroy the vitality of the Micronesian people.

As for me," Kedrus concluded, "I would prefer an honest tyrant to this treachery any day." His moving oratory notwithstanding, Kedrus was finally, pessimistic. It is too late, he feels, for the Micronesians to reclaim their independence. The U.S. has succeeded in turning them into a permanently dependent people. While Ponapeans like to speak about independence, Kedrus argued, they won't bring themselves to vote for it. He was surprised when Ponape rejected Free Association in favor of independence, but he saw himself vindicated when it became clear that Ponape was the only state to defeat Free Association and would be carried into it by the majority vote of the FSM.

Kedrus's narrative neatly binds together the notion of kopwel--the Ponapeans' insistence upon taking care of themselves--with its complement, which is the concept of manaman. Even more than kopwel, manaman was at the center of the Ponapean debate about Free Association.

Like kopwel, the cultural meanings--and relevance to the issue--of manaman are entirely too complex for any single English-language term to bear. Etymologically, manaman shares its roots with the Polynesian mana, a concept fundamental to cultural anthropological theory. I shall discuss its Ponapean meanings in the contexts in which it was primarily used. People asked, "Is there manaman in Free Association?" "Will the Ponapeans have manaman under Free Association?" "Does the plebiscite on Free Association recognize the Ponapeans' manaman?" These questions were raised repeatedly during Ponapean discussions of political philosophy. In general, the Ponapeans' answer to them--echoed in their plebiscite vote--was a resounding "no."

As Raymond Firth long ago pointed out, it is wrong to assume that the "mana-concept," though it may be found throughout the Pacific islands, has identical connotations wherever it occurs (1967 [original 1940]:177). Nor did Firth try to find a single suitable translation for the term, instead illustrating its usage in a variety of contexts. My analysis of manaman here will be limited to the contexts of Free Association and the plebiscite. Before proceeding, however, it should be pointed out that both the Compact of Free Association and the plebiscite are grounded in the very specific political philosophy set out in the United Nations Charter and related documents. Article 6 of the Trusteeship Agreement specifies that the "U.S. shall promote the development of the inhabitants...toward self-government or independence, as may be appropriate to the particular circumstances of the trust territory and the freely expressed wishes of the people." General Assembly Resolution 1541 urges independence or free association as a "result of a free and voluntary choice." The notion of "self-determination" appears repeatedly in documents dealing with decolonization (see McHenry 1975:31-52). Free choice and self-determination are aspects of the Compact of Free Association that were of central concern whenever Ponapeans discussed it.

Ponapeans asked, "Is there manaman in Free Association?," raising questions about its official, legal status. Would FSM be a truly sovereign state, its nationhood genuine, its independence real, its authority final? After nearly 40 years of U.S. rule, many Ponapeans seem convinced that the version of Free Association finally approved by the U.S. negotiators does not have manaman.

One man described the agreement's financial arrangements, including provisions for health care, education, and road-building, as being no more than "sugar-coating" meant to discretely mask America's determination to ensure its own long-term control of Micronesia. Many argued that the U.S. will continue to hold the manaman--the control--just as it has under trusteeship.

A young man in his mid-twenties, discussing the issue with other young men, offered an apposite metaphor. What if, he asked his friends, you were a powerful sorcerer (sounwinahni), with the most manaman in the land, and another sorcerer asked you to share your sorcery with him? By sharing your sorcery you would (as Ponapeans see it) be diluting your own manaman while strengthening that of your rival. Would you share your sorcery with your rival? Of course not. And of course the U.S. will not share its manaman with Micronesia, it will not relinquish it; Micronesia will have no manaman under Free Association.

On a number of separate occasions I heard people speak of a more profound disillusion. The U.S. is not to be believed under any circumstances, it was suggested. It will do as it wishes. The Compact has no manaman--no inherent authority--in the face of American policy. The U.S. will ignore it if it is in its interests to do so. As a document, then, the Compact was seen by many as being impotent and in a sense unreal and untrue. It struck them as an essentially empty facade, devoid of the spiritual vitality that is one aspect of manaman.

In Ponapean cultural terms, this lack of manaman meant that the Compact would command no respect, had no rank, and did not meet their expectations of hierarchical status. Paradoxically, but in complete keeping with the contradictory character of Ponapean culture, the Compact's perceived lack of hierarchical status offended Ponapean attitudes about egalitarianism and personal autonomy. Under the terms of Free Association, people told me, Ponapeans would still not be self-governing: without true national status they would continue to have no status.

One of the most adamant discourses made just this point. Ponapeans should rule themselves, a middle-aged man told me. It is right that all peoples should govern themselves. He recited a Ponapean aphorism, "Ke sohte kak mihmi pahn ohl"--"You can't be beneath another man." Then, drawing upon the same kind of example people used when explaining why Ponapeans had to "kopwel"--"take care of"--themselves (that is, that Americans would be insulted if someone suggested that they needed to be taken care of), he said that if Americans were ruled by a foreign power they would feel just as Ponapeans do.

Shortly after the plebiscite, a man reflecting upon the large majorities with which approval of the Compact had carried the other FSM states said, "We Ponapeans voted for manaman. The rest of Micronesia voted for USDA." He was referring to the surplus food distributed in some parts of Micronesia by the U.S. Department of Agriculture. Ponape long ago refused to accept the free food. To have taken it would have been to fail to kopwel. Ponape voted for autonomy, for control of itself, for manaman--not for assistance, for food, or for the embarrassing admission that it could not take care of itself.

Finally, the notion of manaman was raised in reference to the plebiscite itself. "Does the plebiscite on Free Association recognize the Ponapeans' manaman?," people asked. While other questions about manaman mirror UN concerns about the issues of self-government and independence, this question evokes UN stipulations regarding "the freely expressed wishes of the people" and "self-determination." It is also a deeply philosophical question about the relationship between the manner in which the Compact was drafted and its ultimate value and meaning. Firth notes that for the Tikopia the mana-concept frequently equates "the end product...with the means whereby that product is obtained" (1967:191). The Ponapeans judged the Compact--the end--on the basis of the negotiations--the means--that produced it.

Ponapeans have been colonial subjects for a century now and they have few illusions about the nature of colonialism. Many are dubious about the entire context in which Micronesia's future political status negotiations with the U.S. have taken place. They did not need to read the classified National Security Action Memoranda and the "Solomon Report" in order to understand that the U.S. had no intention of negotiating away its control over Micronesia (McHenry 1975:15-19;231-39). They thus confronted the plebiscite, which asked them to confirm the product of those negotiations, with grave doubts about its manaman.

"The plebiscite has no manaman," I was told. "In our relations with the U.S., we Micronesians have no manaman--we are not sovereign--and so we cannot negotiate for what we want. We have to take what the U.S. will give us." If the U.S Congress decides that it will not approve the Compact (and at the time of the plebiscite there were certainly no assurances that it would), it was explained to me, "then we Micronesians are back where we started: a Trust Territory. How can these negotiations have manaman if we are not recognized as having an inherent right to freedom; how can this manaman--this inherent right--be recognized if we are subject, ultimately, to the decisions of the U.S Congress?" Said someone else, "The U.S. continues to have the manaman. It is in control of everything. It shapes the form and the content of the negotiations. It has made the plebiscite suit its own needs, meet its own requirements. We Ponapeans have not established the terms--we have no manaman." Another continued, "We have not been able to negotiate as we wish to because we do not have the manaman--we are not sovereign. Our inherent right to independence has never been recognized and so the negotiations themselves have no manaman--no authority; they are not between equals."

In order to demonstrate this lack of manaman, Ponapeans pointed repeatedly to the "Referendum on Future Political Status" held in 1975. At that time Ponape District (now Ponape State) voted 3496 for independence, 2386 for Free Association.[5] This is a 60 percent majority for independence. The rural Ponapeans (as distinct from the residents of Kolonia and the outer islands) voted 2645 for independence, 926 for Free Association. This is a 75 percent majority for independence. The districts that eventually became the FSM voted 6866 for independence, 5445 for Free Association. This is a 56 percent majority for independence (Petersen 1979). What impact, what meaning, what manaman could the plebiscite have, Ponapeans asked, if their 1975 vote in favor of independence had been so disregarded that in 1983 they were being asked--or told--to vote for Free Association?

Many people linked the 1975 and 1983 votes. One said, "It seems to me that there have been many votes. None of them has accomplished much and we can only conclude that these previous votes had no manaman. We are thus inclined to be skeptical about this one, too. Why should we think that it will have any manaman?"

"What happened to our vote for independence in 1975?", asked another man. "We voted heavily, even overwhelmingly, for independence, and what do we get? Free Association. What more demonstration do you want that the U.S. runs everything here just as it pleases, including the negotiations and this so-called plebiscite?"

A sense of continuity with the 1975 independence vote was especially apparent after the plebiscite, when many people were clearly proud of the way Ponape had voted. While few Ponapeans had been willing to discuss their intentions before the plebiscite, some spoke afterward. Those who said they had voted "no" on Free Association frequently recalled the 1975 referendum and how they had then voted for independence. Nothing had happened in the interim, they said, to make them change their minds.

Having established contexts for the ways in which Ponapeans used the manaman concept in their deliberations about the plebiscite, I will now consider the translations offered in Kenneth Rehg's and Damian Sohl's Ponapean-English Dictionary (1979:56). "1. adjective. Magical, mysterious, spiritual; official. 2. noun. Magic, mysterious or spiritual power; miracle; authority." The contexts in which the term was used make it clear that of these glosses "official" and "authority" are the most immediate, along with "spiritual power," if this is understood in the sense of moral power, the power of a symbol, or the power ascribed to an official status. I refrained from giving the dictionary's translations first for the same reason that I chose to include references to both UN documents and the 1975 referendum. Though Rehg and Sohl gloss "magical," "mysterious," "magic," and "mysterious power" before the other alternatives, it must be understood from the contexts of these discussions that the Ponapeans were not speaking about anything that would ordinarily be considered magical or mysterious. The manaman that concerned them differs little from the concepts addressed by the UN and their interpretation of the negotiations' manaman is as thoroughly rooted in an evaluation of the impact their vote in the 1975 referendum had on those negotiations as it is in their own political culture.

In these contexts manaman variously meant "official," "authority," "power," "control," "sovereignty," and "rights." There is as well an underlying concept of "inherent," which is roughly equivalent to the "mysterious or spiritual" characterization offered by Rehg and Sohl. Raymond Firth's "empirical" analysis, in which he proceeded by first considering the contexts where _mana_ is used, established that for the Tikopia the concept can connote both means and end, cause and effect. Ponapeans used _manaman_, in this case, in essentially the same fashion: the negotiations were the means, the Compact the end, and the plebiscite the point at which actions turned into substance. Because the negotiations did not recognize Ponapean _manaman_ , they had no _manaman_. Because the negotiations had no _manaman_, the Compact of Free Association has no _manaman_. Because the Compact has no _manaman_, the FSM and Ponape will have no _manaman_.

The Ponapeans' analysis was, in spite of its concreteness, equally spiritual and symbolic. The Ponapeans are under no delusions about their material power or their political and economic place in the world. They are capable of seeing themselves as the small and isolated entity that the world perceives them to be. Their concern lies instead with what English-speakers would call "inherent" or "inalienable" rights, not unlike those heralded in the American "Declaration of Independence," which asserts that all men are endowed with "certain unalienable Rights." America's actions, many Ponapeans maintain, demonstrate that the U.S. does not respect Micronesia's inherent or inalienable right to sovereignty, American claims to the contrary notwithstanding. If the negotiations are not in good faith, then there cannot be any spiritual or moral power--

any real meaning--in the documents. The Compact does not "offically" recognize their own ultimate authority.

Some Ponapeans point to Title Four, Article V, Section 453 of the Compact, which stipulates that the provisions of the compact concerning U.S. military control of the region "shall remain in full force and effect...until the fifteenth anniversary of the effective date of this Compact...and thereafter as mutually agreed." As Ponapeans (and indeed most Micronesians) interpret this clause, the Compact specifies that the U.S. retains military control until it decides otherwise. The history and nuances of this clause are subjects that must be discussed elsewhere, but it remains that Ponapeans interpret the clause as a denial and rejection of their manaman.

In the sense that the Ponapeans were more concerned with the official import of the Compact itself than with their material or realpolitik status, the issue might be cast as one of legitimacy, and is thoroughly grounded in traditional or native Ponapean political theory. In One Man Cannot Rule a Thousand I describe a Ponapean chiefdom, Upper Awak, in the process of splitting apart in order to form a new chiefdom. I stressed that for the Upper Awak people the greatest problem was not the fissioning process itself but the crisis of legitimacy touched off by a challenge to the genealogical status of their chief. Ponapean politics are as pragmatic as any others, yet that pragmatism is supported by a backbone of genealogical principle. A chief's reign depends upon his personal acumen and political skills, but his manaman--as differentiated from acumen and skill--comes from his ancestors and his genealogical position with respect to them. For

Ponapeans, genealogy is not an agreed upon, well-established biological fact. It is tenuous, fluid, and subject to argument, interpretation, and historical revision. Genealogy remains, nonetheless, as the source of legitimacy, and its highly flexible character is verification of its importance. If genealogy were rigidly interpreted, either the polity would be a shambles or claims of descent would have no meaning within it. Rivals for political titles each assert their genealogical primacy; the winner rests his argument upon the fact of his victory. His genealogy is _the_ genealogy--and the source of _manaman_--while he reigns. Approval of the Compact was interpreted as a victory for the U.S. and affirmation of its _manaman_; its corollary was denial of Ponapean _manaman_.

Ponapean interpretation of the Compact is founded upon the complex character of _manaman_, then. American actions have convinced them that the U.S. does not recognize their _manaman_. In the absence of such recognition the Compact is of little use to them. It was thus that the majority of Ponapeans rejected it.

It must be understood, however, that this metaphysical interpretation of the Compact's force did not obscure the Ponapeans' practical analysis of what it holds in store for them. Just before the plebiscite, with timing that was not coincidental, the Ponapeans found themselves confronted with yet another matter to ponder, one that highlighted the dilemma upon which they had already focused their attention. A group of Hong Kong Chinese, worried about the forthcoming end of Britain's lease on the Crown Colony and thinking to take advantage of Free Association's American-immigration provisions, offered $10 million to Ponape for land and citizenship there.

The Ponapeans greeted the proposal with mixed curiosity and humor, but in analyzing it they displayed their marked talent for self-critical reflection and their historical perspective. One wag argued that the Chinese are the only people on earth with a higher birthrate than the Ponapeans, and conjured up a scene of an agitated Ponapean husband urging his wife to bear children more and more quickly so that the Ponapeans would not be outnumbered on their own island. His joke reveals the Ponapean fear, never far from consciousness, of outsiders taking over their land.

Much opposition to the Hong Kong proposal, which was nearly universal, focused upon Ponapean attitudes toward what they speak of as their own irresponsibility. While current law makes it difficult to become an FSM citizen and prohibits non-citizens from owning land, the Hong Kong proposal included the stipulation that the Chinese would become FSM citizens. Whenever the proposal was discussed, essentially the same predictions were repeated. The Chinese, it was argued, would immediately begin buying land and votes. Soon they would own most of the island and control the Legislature. The Ponapeans would find themselves living under the same conditions they experienced during the era of Japanese rule on the island. Many Ponapeans claim that they simply do not trust themselves, or their compatriots, to act responsibly. They are frequently critical of the few who have sold land and of their own dependence upon cash. Their response to the Hong Kong proposal was rather uniform: Given their own perceived shortcomings, the safest course was to avoid temptation by rejecting the proposal. The proposal was rejected by Ponape's governor, after broad consultations (as nearly as I can determine), following genuine historical analysis of the likelihood that too many Ponapeans would choose short-term gains and suffer long-term consequences.

Ponapeans can be, as I have said, quite critical of their own past. The kopwel and manaman concepts do not function in an historical vacuum. They were asserted so forcefully, I believe, precisely because people saw them threatened.

The Hong Kong incident is especially instructive because of the way in which the proposal was seized upon as a means of demonstrating both the lack of manaman in Micronesia's relations with the U.S. and the consequences that flowed from its absence. In the course of a discussion about the proposal, among a group of men and women drinking kava, it was suggested, sardonically, that an auction be held. Ponape would go to the highest bidder: the U.S., Hong Kong, or any other interested party. The response was immediate. It came from one of the most consistently thoughtful members of the group. "That is precisely the point. We could not auction Ponape off even if we wished to. We cannot negotiate freely among the nations that might be willing to help us. The U.S. controls us utterly and there is nothing we can do about it. The negotiations have never recognized our manaman--our right to choose--and the Compact was, in effect, imposed upon us. It cannot have any more manaman than Trusteeship. In fact, its only benefit is that it ends Trusteeship; we will no longer be beholden to the UN as well as to the U.S. One master is better than two."

Ponapean reactions to the plebiscite campaign

Ponapeans prepared themselves for the plebiscite and Free Association at length, reflecting painstakingly upon their own history and culture, and then made carefully considered decisions. But their decisions were based upon more than the simple fact of the plebiscite and its portents. The Ponapeans' concern was not only with their relationship to the U.S.; they were also interacting with the national government. While the FSM government is Micronesian, it is not Ponapean (this is not to argue that it is Trukese or any other specific non-Ponapean culture, it is merely to state that Ponapeans do not view it as Ponapean). This truism is worth noting for at least two reasons. 1) Simply because it is not Ponapean, the FSM government's plebiscite campaign overstepped certain elemental Ponapean notions of propriety, and in doing so managed to provoke some unintended consequences. 2) Because the structure of the FSM government is similar to that of the U.S. government--even though in its operations it works quite differently--there were in the entire concept and process of the plebiscite important elements that expected the Ponapeans to make critical political choices in a fashion that had only slight relevance to the character of Ponapean politics.

A plebiscite is not an especially peculiar thing in and of itself. The UN has supervised a number of them, some in other Pacific island groups.[6] A majority vote is something that can be empirically verified with relative ease and it serves, to some degree, to bridge the cultural gaps between ruler and ruled, so that there can be some agreement about what is taking place. Though Ponapeans are no strangers to the electoral process, and take voting at least as seriously as most Americans, I am not at all convinced that the plebiscite was a truly Ponapean or Micronesian way of reaching a decision. And this plebiscite, in particular, was not conducted in a fashion that Ponapeans felt comfortable with. At least a few of the negative votes on Free Association may be attributable to the character of the plebiscite--rather than the issues--and the campaign that accompanied it.

It is useful to consider for a moment the etymology of the term "plebiscite": what is it that that we are talking about? According to the _American Heritage Dictionary_ (First edition, 1975), the Latin _plebiscitum_ is literally "people's decree," but _scitum_, from the past participle _scitus_, has as its meanings "to approve, decree, 'to seek to know'" and is derived from _scire_, "to know," "to separate one thing from another," and "discern." "Science" derives from this same root.

The term devised to translate "plebiscite" into Ponapean, "_repen kupwur_," is remarkably faithful to the English term's Latin origins. "_Repen_" is glossed by Rehg and Sohl as "to search" and "_kupwur_" as an honorific term for "wish, intention, plan, decision, desire, heart." The root of "plebscite" means both people's decree and to seek to know. _Repen kupwur_ stresses the search for the people's wishes or intentions. The Ponapeans were told in their own language that the purpose of the plebiscite was to find out what they wanted.

We would do well to recall that as they prepared to vote in the plebiscite many Ponapeans spoke of the 1975 referendum in which they had voted rather unequivocally in favor of independence. They were once again being asked--according to the repen kupwur translation--to state their preference. In bold contrast to this stands the FSM portrayal of the plebiscite's purpose: to ratify the Compact of Free Association. Because it is not my intention to analyze the dynamics of Ponape-FSM and -U.S. relations in this article, I shall not focus upon the reasons for the disparity between Ponapean and FSM views about the aim of the plebiscite. Rather, I wish to consider the ways in which this contradiction served to exacerbate already existing objections for what were essentially cultural reasons.

I stress that the underlying reasons for Ponapean misgivings about Free Association were multiple and complex, and that the following discussion deals with only one facet of that resistance. It was widely argued in the FSM, post facto, that the Ponapean vote was directly the result of the plebiscite's timing, and I do not want to see my analysis used to bolster that shortsighted interpretation.

After the June 21 date for the plebsicite had been announced during the preceding winter, the Ponape State Legislature passed a resolution asking the FSM President to postpone the plebiscite until people had had more time in which to consider the issues. The plebiscite was not postponed, according to several FSM government officials, for a number of reasons: the U.S. was pressuring FSM and the Marshall Islands to hold their plebiscites as soon as possible after the Palauan plebiscite, which had been held in February; the FSM government wanted to see the Compact approved by the U.S. Congress before the 1984 U.S. presidential elections, in hopes of not having to renegotiate the Compact with a new administration; and there was a palpable fear in the FSM that the Trust Territory bureaucracy, which had been severely limited by the transfer of responsibilities to the Micronesian governments, was trying to reclaim some of its former authority. Though there had been at the outset roughly four months in which to prepare for the plebiscite, the Ponape Legislature's request for postponement and the delays it entailed meant that on Ponape the "education program" that preceded the plebiscite was only about two months long.

When I arrived on Ponape, nine days before the plebiscite, the Ponapeans' dilemma was manifest. Though it was typical of their customary humility that they should claim in response to a direct question that they do not understand an issue or have an opinion on it, the tone of the conversations and discussions touching upon the plebiscite ranged from indecision to outright confusion. I heard young college graduates with responsible bureaucratic jobs and old men who rarely left their farmsteads say much the same thing: their thoughts were churning, they did not have enough time, and they were not eager to make up their minds.

One elderly man, who had availed himself of every opportunity to hear the issues explained, despite the blindness that ordinarily keeps him from traveling about on Ponape's difficult trails, spoke to me with eloquence and great feeling about his confusion. "It seems," he said, "that every source of information I have turned to offers me a different explanation of what is entailed in this Compact with the United States. I don't know if it's more time that I need or more information, but I certainly don't think that I should have to make such an important decision right now."

"What are the alternatives?," asked another man. "They haven't been made clear to us."

What was clear was that many people felt strongly about having more time and a more comprehensive education program to aid them in their preparations. On one of the outlying atolls, it was reported to me, people were outspoken in their unhappiness about having a government education team summarize 13 years of negotiations in a three-day visit. Two expatriates who have long and intimate knowledge of several Ponapean communities that I do not know well gave me nearly identical accounts of local sentiments: throughout the island people were saying that the plebiscite was being held much too soon and that much fuller discussion about the meaning of the Compact was needed. Everywhere, people were saying that they were not happy with their understanding of the issues.

This expressed lack of understanding must be seen for what it was: an indication of the Ponapeans' intense interest in the issues. Most Ponapeans were treating the plebiscite as a matter of the utmost importance, and had begun to suspect that their interest in it was not widely shared in the rest of the FSM.

Indeed, when the Roman Catholic Church in Micronesia, and particularly on Ponape, came under fire for allegedly opposing the Compact, the Bishop felt obliged to write a letter explaining that the Church was doing no more than urging people to take the vote seriously-- that is, to really consider how they were going to vote. Several Ponapeans with whom I discussed this letter suggested that it implied--accurately, they thought--that the national government was not encouraging serious debate about the Compact and its alternatives. Again, several expatriates with comprehensive knowledge of contemporary Micronesia commented that Ponape seemed to be the only place where there was real discussion of the issues. One remarked that not only were the Ponapeans alone in asking questions about the Compact, they were asking the *right* questions.

Indeed, the perplexity voiced by some of the people was belied by the questions they were asking. As one man put it, "This plebiscite really must be important: everyone is talking about it!" What appeared as confusion was frequently an expression of concern or of a desire for more time and information. It often seemed that indecision and resolve existed simultaneously, for strong opinions were also voiced--not about how people should vote, but about interpretations of certain of the Compact's provisions. People explained their understandings of the Compact to one another and as they did they spoke of their wishes for more and better information. Following the presentations of the teams sent out by the education program, it was common to see groups of people clustered around information sheets and Ponapean translations of the Compact. When the Ponapeans voted, it was clear that most had made good use of the materials available to them. They knew what they were doing.

The Ponape State Legislature, having had its request for a postponement rejected by the FSM government, then asked the UN Visiting Mission, there to observe the plebiscite, if it could not get the vote postponed. They were again rebuffed. John Margetson, President of the UN Trusteeship Council, said that "The issues have been in the air for many years," and Trusteeship Council Vice President Paul Poudade added, "No one is expected to know the Compact by heart." Obviously, there was considerable divergence between the perspectives of the Ponapeans and the UN Trusteeship Council. In brief, the difference lies in Ponapean doubts about the level of their manaman under the Compact. Given general Micronesian resistance to the requirements for mutual U.S. and Micronesian agreement on termination of the "deniability" aspects of the Compact, and specific Ponapean fears about the rights of the U.S. military in the area, it should surprise no one that they felt they were being forced to vote before they were fully prepared to do so.[7]

In contrast to the great care with which the Ponapeans deliberated, both official and unofficial FSM attitudes toward preparations for the plebiscite seemed somewhat cavalier. Many people on Ponape felt that the national government did not truly want the Ponapeans--or the other Micronesians for that matter--to consider the issues too closely, despite the fact that the plebiscite had been translated as repen kupwur--"to search for the people's intentions."

The FSM position was most apparent in the days immediately preceding the plebiscite. FSM President Tosiwo Nakayama made radio and television[8] speeches urging voters to approve the Compact: "The Compact of Free Association provides us the vital financial resources necessary to assume this heavy responsibility with genuine promise of continued progress toward our country's goal. It is time for us to end the trusteeship, assume full governmental responsibility, and to join the world's community of nations." Bailey Olter, FSM Vice President, also asked for a "yes" vote, praising in particular the Compact's foreign affairs aspects and its provisions for "unilateral termination."[9] Andon Amaraich, who chaired all the FSM negotiations with the U.S., said, "For the first time in all these years we have a chance to say what we want. We have a very good deal under the Compact.... We have been working so hard all these years. I would hate to see it all lost" (Pacific Daily News, June 19, June 23, 1983).

On the eve of the plebiscite Ponape's radio station opened its broadcast studio to anyone wishing to speak about the following day's vote. Edwel Santos, Speaker of the Ponape State Legislature, made a brief statement over the air. He said that while he thought the "general principle" of Free Association was "well founded," "What bothers me is what I see of our so-called leaders, the propounders of the compact who were buoyed up with false hopes of deliverance, based on the predictions of fanatics and imposters." He went on to note the dissimilarity of the Micronesian islands' traditions and cultures, concluding that "the slogan of unity is and ought to be in this form:

"United we fall (our languages, customs and traditions and concepts in life are different) and like our forefathers who displaced no other men on this sacred altar Pohn Pehi, divided or separated we stand."[10]

Though most Ponapeans did not hear Santos's broadcast, it was widely discussed. And it drew an immediate response from the FSM leadership. A number of officials rushed to the radio station and delivered speeches in favor of the Compact. Given the Ponape Legislature's request for a postponement and Santos's known unhappiness with the timing of the plebiscite, it is perhaps not surprising that his speech was interpreted by some as opposing the Compact. Yet his remarks merely referred to the "false hopes" of those who "propounded" the Compact and suggested that these were based upon the predictions of nameless "fanatics and imposters."

These are strong words for Ponapean oratory, to be sure, but all that Santos actually said was that his support for the principle of Free Association was tempered by doubts about "deliverance." He did not say how he was going to vote, nor did he suggest how others should vote. It is ironic that his brief statement drew such pointed response. The ensuing speeches in favor of the Compact served only to validate Ponapean feelings about the FSM position and to exacerbate the Ponapeans' growing sense of alienation from the plebiscite. These speeches served only to confirm the Ponapean's suspicions that rather than being asked their opinions they were being told how they should vote.

There was a widespread perception on Ponape, expressed by many Ponapeans and by several expatriates sensitive to the climate of opinion, that every official pronouncement on Free Association was meant to place it in the most favorable possible light. One FSM government official told me that when he asked the head of the FSM's Plebsicite Commision (the body charged with preparing for and conducting the vote) to have the Compact's drawbacks explained to him he was informed that it had none; this, he said, was precisely the way the Compact was presented to the public. An outer-islander reported that his people were insulted when they were visited by the education team sent to prepare them for the vote. "The education team's attitude was that we should simply take the government's word that the Compact was the best arrangement we could get. They didn't want to discuss it with us."

The government's education teams seem to have been widely distrusted. The feeling stemmed in part from a perception that there was little or nothing being said about alternatives to Free Association, or about the arrangement's negative aspects. An expatriate advisor to the FSM government explained that since the plebiscite was about Free Association, there was no need to provide information about other statuses, and argued that even though all the presentations were distinctly neutral, the Ponapeans insisted on interpreting them as pro-Free Association.[11] (In light of the independence vote in the 1975 referendum, the Ponapeans' desire for a discussion of the alternatives was certainly understandable.) Perhaps an even more important factor in the Ponapeans' distrust, however, was the simple fact that most of those serving on the education teams were government employees, drawing--and depending upon--government salaries. Many suggested that the government education program was focused entirely upon how much money FSM would be receiving from the U.S. "When so much money is at stake, how can we give complete trust to those whose salaries will be paid with that money?"

This is the point at which accusations about the activities of the Catholic Bishop and the role of the Catholic Church become relevant. I have already noted that the Bishop had to clarify the Church's position: he stated that the Church was doing no more than urging people to give the issue serious study before they voted in the plebscite. Brother Henry Schwalbenberg, S.J., who had been writing a series of analyses of the Compact and alternative statuses for the Micronesian Seminar in Truk, was in fact brought to Ponape to help prepare government education teams there. But then the local Catholic Church began an education program, sending out its own education teams. These were widely perceived as being relatively free of the implied restraints on the government teams, and as offering a great deal more information about alternative political statuses.

Antagonisms between the Protestant (Congregationalist) and Catholic communities on Ponape occasionally flare up, though their differences ordinarily remain low-key. Tension increased in the context of the plebsicite. The Catholic Church on Ponape has in recent years taken upon itself a good deal of responsibility for effective political education and there was nothing out of character about its involvement in voter education for the plebiscite. The participants, and the impetus, were entirely Ponapean. The Catholic education teams presented an unbiased set of materials and, to my knowledge, strove to lead unbiased discussions. It was suggested, however, that a few of the more thoughtful and articulate discussion-leaders had difficulty hiding all traces of personal opinion over the course of several hours of give-and-take. Though never directly speaking their minds, several seem to have given some inkling of their unhappiness with aspects of the Compact. If people perceived doubts about the Compact among participants in these Catholic education teams, it is likely that they were sensing support among participants in the government's teams. Everywhere Ponapeans turned, it seems, they found the FSM pushing for approval of the Compact.

I have described the context of the plebiscite itself at such length because it is crucial to an understanding of the Ponapean reaction to it. Evidence suggests that the Ponapeans had ample reason for believing that they were being told how to vote. While FSM support for the Compact may explain the large majorites that approved it in other states, this same support, I think, helps explain Ponapean opposition to Free Association. The emphasis placed upon individual autonomy within the fabric of Ponapean social and cultural life is a part of the explanation, one to which I will return. But I wish first to point to a much more direct way in which Ponapean custom (tiahk en Pohnpei)--so vividly affirmed in Edwel Santos's speech--was contradicted by FSM pressures for approval of the Compact.

A very specific and fundamental thread running through all of Ponapean culture is kanengamah. I find it one of the most difficult to translate of all Ponapean terms. (I devote several pages of the Epilogue in One Man Cannot Rule a Thousand to my own misinterpretations of it.) The Rehg and Sohl dictionary glosses it as "patient," which is only one of its many meanings. The term is compounded of "kanenge"--"substance; inside of something, contents"--and "mah"--"old, aged; ripe." It bears, then, the connotation that the self--the substance of the self--is mature, but this begs the question in a sense, because kanengamah--or the ability to kanengamah--is that which is expected of a mature person. In some ways its closest approximation in English might be "face," in the sense of "saving face."

Kanengamah is a quality of being. It parallels manaman in its importance as a cause of behavior or a means to an end, but it seems to be an acquired, or learned, quality rather than inherent or ascribed. I have heard it described as the "poahsoan"--the "core" or "base"--of a person. It can also be an action--a person can kanengamah--but when it is used in this way it is essentially an intransitive verb. The concept of "mahk," which has its own multiplicity of meanings, sometimes serves as a sort of transitive form of kanengamah.

One of kanengamah's meanings is akin to "fortitude." It allows one to endure, to bear up under unfortunate circumstances without expressing one's anguish. But it also means, in the context of daily life, simply not expressing one's sentiments, feelings, or beliefs. It can mean, as I have heard it put, constructing and keeping a blank countenance.

The importance of kanengamah in the present context derives from this deeply engrained habit of being. It is fundamental to Ponapean culture and to Ponapeans's expectations of proper social behavior. In the course of the many discussions about the plebiscite, in the days leading up to it, only once or twice did I hear someone say how they would vote. In a matter of such great importance, a direct expression of opinion comes only in exceptional circumstances.[12] As with so many other aspects of Ponapean culture, the role played by kanengamah in the Ponapean plebiscite vote is intricate and complex.

Unwillingness to express an opinion, about the vote in this case, is at its most manifest level simply an element of courtesy. "What if you were to favor one candidate," I was told, "while someone else favored another? If you speak about your position, how you're going to vote, then you'll offend the other fellow and he'll feel bad. It would be the same if he were to speak his mind." Expatriates sometimes misunderstand this element of Ponapean etiquette. Several spoke of how Ponapeans, when asked how they were planning to vote, would respond by asking for the expatriate's opinion. This was mistakenly interpreted as an indication of how easily the Ponapeans could be swayed, how blindly they followed the opinions of leaders.

At a deeper level, kanengamah reflects another aspect of Ponapean courtesy. Any attempt to directly influence another adult's behavior is perceived as improper deportment. "I don't like to give the impression that I am telling others what they should do. So I would never tell anyone how I am going to vote: it might be interpreted as a suggestion that that is how I think they should vote. That would be embarrassing both to them and to me." In this sense kanengamah is related to kopwel and manaman. One should never imply that another cannot care for himself, or that another is not or cannot be autonomous.

Telling someone else one's own opinions, then, could upset them if theirs were a differing view, or it might be taken as an insult to their dignity. Kanengamah helps to avoid the unpleasantness in either case.

Kanengamah holds an even more profound meaning in the context of the plebiscite. It was set before me in a discussion with a Ponapean philosopher who was teaching me about the kanengamah concept in general.

"What if there is a man who helps me, takes care of me, has given me--over the years--food, clothing, money, help of various kinds, and now his brother is a candidate [for political office]? If I should be asked how I'm going to vote when I am in fact planning not to vote for this man's brother, and I say that I'm not going to vote for the brother, I will hurt the feelings of the man who's done so much for me. So I mahk, I say nothing." (In this case mahk is used as transitive form of kanengamah.)

I confess that when I first recorded this conversation it did not occur to me that I had just been given a commentary on the plebiscite. In retrospect, however, his choice of example coincides with a host of examples people employed at the time of the vote. The plebiscite was on people's minds; when they spoke, the topic often managed to express itself. Here is a thoroughly polite, properly kanengamah Ponapean gentleman, speaking to an American he does not know well. The Ponapean chooses to illustrate kanengamah with a pleasantly ambiguous parable about the provision of food, clothing, money, and help of various kinds, and the expectation of a favorable vote. How should courteous Ponapeans respond in such a situation? Kanengamah, of course!

If we now consider the speeches given by the FSM leaders and the general Ponapean perception of the FSM position, we can see that preparations for the plebiscite, though conducted by Micronesians, were not carried out in a fashion culturally acceptable to the Ponapeans. Though this may strike some as trivial, it was of the utmost significance to the Ponapeans because it turned the entire plebiscite process into a symbol of precisely the kind of politics the Ponapeans saw themselves opposing.

I have, of course, no evidence of how any individual Ponapean voted in the plebiscite, so I cannot verify what Ponapeans said about their reactions to the conduct of the plebiscite. But relatively few Ponapeans in the areas where I gathered most of my information voted for Free Association, and I have no explicit reasons for doubting those who told me, after the fact, that they had voted "no." Some Ponapeans said that they were quite disturbed, even insulted, by the radio speeches made in favor of Free Association.

Sitting amongst a group of kava-drinkers on the day of the plebiscite, when discussion of the vote was particularly intense, a man explained to his companions why he had been so angered by the preceding night's speeches. He said that the speakers were "kampainih"--that is, "campaigning" (obviously an English loan word)--in favor of the Compact. "Those men were silent all through the period preceding the plebiscite, and then spoke only at the last minute. They did not care to engage in discussion with us, and help us get at the real meaning of the Compact by explaining their interpretations of it. The only purpose of such a tactic was to swing the vote in favor of the Compact. They were trying to influence those who hadn't yet made a decision or were irresolute. They were campaigning, just as if they were running for office [that is, they were making empty promises]. How can we ever trust these men again, after they have behaved in this fashion?"

A few weeks later, in another part of the island, I was speaking with an old acquaintance for the first time since the plebiscite. The matter of the radio speeches surfaced. "Those speeches really upset me, you know. They were like political campaign speeches. They just weren't Ponapean; they were improper and unsettling. They should not have been made. In fact, they may have worked just the opposite of the way they were intended; they may have had negative effects. We Ponapeans mahngki [mahk, again used as a transitive form of kanengamah] our intentions, especially when it comes to such a public issue as a vote. We don't say what we're going to do--we hold it in. If you let your thoughts and your feelings out or if you tell people what you're going to do, you disturb them and they may well respond in unpredictable or directly contrary ways.

"I had been thinking that I would vote in favor of Free Association. Then I heard all these speeches telling me to vote 'yes'. I was so indignant, I went and voted 'no', just to spite them. And I know that were others around here who did just the same."

As with the allegory about the generous man whose brother becomes a candidate, my initial understanding of this commentary was quite literal. Again, when I see it placed in the context of all I heard at the time, I am inclined to perceive something a bit deeper. While in the course of this short narrative my acquaintance says that he changed his vote to spite those who did last-minute campaigning in favor of the Compact, there is a broader meaning in what he says. This is not a challenge to his veracity but an interpretation of his rationale.

Ponapeans analyzed the compact of Free Asociation in terms of reference derived directly from their own cultural and historical experiences . Concepts like manaman, kopwel, kanengamah and mahk, and repen kupwur expressed for them fundamental issues that English-speakers might formulate as dignity, sovereignty, and self-determination. They experienced the plebiscite, as well as Free Association, as a direct refutation of these fundamental categories. The very way in which the issues were set before them--that is, as a fait accompli to which they were to give formal approval--seemed to confirm all their misgivings about the nature of Free Association. As the majority of Ponapeans understood the plebiscite and FSM preparations for it, they were being told how to vote, despite the fact that the Ponapean translation of "plebiscite" accurately described it as a search for their opinions and desires. In their view, there was no manaman in the plebiscite, there was no manaman in the Compact, and they would thus have no manaman under Free Association.

By the time the Ponapeans voted, then, they had experienced a number of things that disturbed them. Their doubts about Free Association were aggravated rather than assuaged. The FSM approach to the plebiscite backfired: instead of satisfying Ponapean aspirations for true self-government, the plebiscite thwarted them. Most non-Ponapeans concerned with the vote, Micronesian and expatriate alike, did not understand this.

It is ironic that the generally-accepted interpretation of Ponape's vote is that it was a protest against the short duration of the education program or the national government, and that it was orchestrated by the opposition of Ponapean leaders. There is in this little comprehension of the vote's underlying meaning. The vote's implications for Ponapean relations with the FSM national government are manifold and must be addressed elsewhere, but as I have demonstrated here, the Ponapeans are deeply concerned about self-determination; to the extent that they perceived their national government as part of the political process keeping them from it, their vote can be interpreted as a protest against certain of the national government's policies. But any interpretation which stresses the Ponapeans' vote as largely or primarily a vote against the FSM government is both unfortunate and mistaken.

In the days and weeks following the plebiscite it quickly became the received truth that Ponapeans voted against the Compact because the education program had failed. There were three schools of thought about this, not mutually exclusive. The first was that the education program had started too late and that there simply had not been enough time in which to convince the Ponapeans of the Compact's value. The second was that the education program or the members of the education teams were in fact biased against the Compact and had persuaded the Ponapeans to oppose it. The third was that the Ponapeans were too arrogant and lazy to learn from the education program and voted against the Compact out of willful ignorance.

The first and third of these propositions share the assumption that the purpose of the education program was to convince the Ponapeans that they should vote in favor of the Compact. Had there been ample time for the program to be effective, it is argued, or had the Ponapeans paid more attention to it, they would have voted as FSM wished. The second interpetation focuses the blame upon Ponapeans who may have strayed from the FSM's pro-Compact position. In each case we are confronted with a straightforward denial of, or obliviousness to, the great care with which Ponapeans prepared themselves for the plebiscite. Thus the Ponapean perception that FSM was telling them what to do, rather than asking them what they wanted, was unconsciously shared by the national government and the expatriate advisers and observers.

The peculiar notion that the education program was biased against the Compact clashes jarringly with the widespread Ponapean sentiment that the government's program did little but praise the Compact. There were charges that Ponapean leaders opposed the Compact and that that opposition had filtered into the education program. As I have pointed out, however, most Ponapean leaders took great care to avoid any semblance of open partisanship. From the Ponapeans themselves and the handful of expatriates who speak Ponapean and listened to the education programs, came strong assurances that the leaders of the programs had not spoken against the Compact.

Few Ponapeans gave credence to claims that the brevity of the education program was responsible for their "no" vote. Given that the request to have the plebiscite postponed was made explicitly in order to permit more study of the Compact, it is significant that, post facto, only a few Ponapeans thought it likely that their decisions would have been changed by more education. The education programs and the national government's refusal to postpone the vote had simply verified their own suspicions about what the Compact held in store for them. The confusion that people had expressed was resolved, finally, by their interpretation not only of the Compact but of the way in which the vote on it was presented to them.

As I argued in "Ponape's Body Politic," Ponapean leadership is highly responsive to community opinion. I believe that it is a grave misunderstanding of Ponapean society to attribute the defeat of the Compact to the opposition of the island's leaders. The evidence suggests that a two-thirds majority of rural Ponapeans voted against Free Association because they judged it inferior to independence. The manner in which the FSM presented the issue merely confirmed that judgment. Indeed, the very notion of a plebiscite runs against Ponapean (and Micronesian) sensibility. The Ponapeans found themselves forced into what they perceived as the most profound decision they had ever had to make; they were asked to vote in an election that essentially ignored their own sensibilities about the nature of decision-making. As I suggested in "Ponape's Body Politic," Ponapeans regard legal decisions as perpetually negotiable. Contexts and conditions change, and as they do, so must decisions. Plebiscites, which grow out of Western European tradition and its colonial history, take for granted that there is some single, most acceptable answer to a vexed sort of question. Euro-American sensibilities may be comfortable with such solutions, but one wonders if there is anything inherently "democratic" about a process that obscures more complex perspectives on means of resolving dilemmas. The FSM plebiscite may have satisfied U.S. and UN proprieties, but it hardly reflected the careful, consensus-achieving, eternally flexible kind of processes that characterize the Ponapean body politic. There is a sense in which the Ponapean "no" vote can be interpreted as a vote against the plebiscite itself.

What Ponapeans were voting for

Throughout the summer of 1983 Ponapeans expressed deep concern about the quality of their culture and its future. Confronted with a plebiscite, they responded with historical reflection, cultural analysis, and political courage. In drawing this paper to a close, I wish to consider the Ponapeans' commentary on their own culture, as it exists in 1983, and the ways in which that commentary represents the Ponapean vision of the future they saw themselves charting with their votes.

It seems necessary to note a common-sense fact that is easily lost sight of in an analysis such as this. Ponapeans are, like any other people, a diverse group: some are more committed to the political dimensions of life than others, some are more articulate, and some more impetuous. There are Ponapean cynics and skeptics and, perhaps, a few fools and innocents. Since most of what I have recorded comes from conversations among Ponapeans and not from responses to questions posed by me, it is possible that I am reporting the sentiments of a slightly more loquacious subset of the generally taciturn Ponapean population. There are of course some people with whom I have more contact than others and of whom I have more knowledge. Of this group there were two men who admitted to me that they had not been paying much attention to the education programs. It was one of these who said, "This plebiscite really must be important: everyone is talking about it!" I know that neither of these men participate in the communal politics of their chiefdoms with much enthusiasm and that both are occasionally chided for their relative indolence. Their interest in the plebiscite was consistent with their involvement in politics in general. The pair stood out in contrast to their neighbors.

Among those I know well there are also a few men and women who have been able, or cared, to express their thoughts in more detail than most. I cannot say if this is because they are more articulate or simply because of our greater intimacy. I have tested the ideas they helped me with and found that they seem to ring true to other Ponapeans. It is worth repeating that much of what follows comes from people I have known for ten years and who have a good understanding of what it is that I do while I am on Ponape.

It should also be noted that I did encounter Ponapeans whose opinions differed from those I analyze here. Some argued that despite its drawbacks, Free Association would bring a swift end to Trusteeship and that this should be Micronesia's first priority. (This seemed, in fact, to be the unofficial FSM position on the plebiscite.) I heard a handful of Ponapeans speak positively about Free Association, but many of those who voted in favor of the Compact claim that they did so only in order to rid Micronesia of American Trusteeship. The vote in favor of Free Association, which was heavy in Kolonia and on the outer islands, deserves full consideration but it must be addressed elsewhere.

Near the beginning of this paper I discussed Ponapean historical awareness and self-criticism in order to show that Ponapeans viewed their participation in the plebiscite as an historical act with both antecedents and consequences. Throughout the body of this work I have tried to illustrate the ways in which Ponapeans analyzed the social and political pressures bearing in upon them: they employed their own cultural terms to ensure that the decisions they arrived at would help them preserve their culture.[12] It is one thing for a scholar to set forth such arguments, another to show that it was truly the Ponapeans--and not the scholar--who were engaged in this reflection and analysis. It is now my intention to illuminate the quality of the cultural analysis Ponapeans applied to the 1983 plebiscite.

Several specific aspects of Ponapean culture were less directly connected to the plebiscite issues than the concepts of kopwel, manaman, and kanengamah, but still had great impact on the the Ponapean vote. One of these was the identification of generosity as a--perhaps the--central element in Ponapean "tiahk"-- "culture" or "custom." A second was the role this deep-seated generosity played in creating a sense of trust within communities. And a third was the resiliency of Ponapean culture--its depth and strength and the qualities of endurance it has shown. Ponapeans contrast these aspects of their lives with what they know of the ways of American culture, and their vote in the plebiscite was at least in part meant as a reaffirmation of Ponapean culture.

I have described elsewhere (1984) the continuity that the Ponapeans' active involvement in cultivating their land gives to their culture. Agricultural produce and the work that goes into processing it remain important cultural symbols. During the weeks surrounding the plebiscite, I heard several people speak of their land as the Ponapean equivalent of Americans' "mwohni kohl"--"gold money" or "hard currency." One man explained how the American paper currency in circulation, upon which people have come to place so much reliance, is backed up by gold that is not on Ponape or in Micronesia but in the United States. Even under Free Association, he observed, the bullion symbolized by the currency will remain in the U.S. "My gold is (in) my land. The money here is American and the gold that it stands for is in

America. Ponape's gold is here: it is our land."

The Ponapean term for land, in this context, is "sahpw," and as a cultural concept it of course has connotations that differ from "land" as an English-language term. Ponapeans plant much--in many parts of the island, all--of their land in permanent tree crops. The Ponapean staple, breadfruit, grows on enormous trees that bear for scores of years. While sahpw is used as a term for "land" in opposition to the "sea" or the "sky" and is used as term for a particular piece of land or farmstead, it also means planted land--land that feeds people--in opposition to "wehl" or "nanwel"--the "jungle." The Ponapean word for land connotes the place where people live, from whence they derive their livelihood, the crops that surround their homes. To have "land" is to have crops, to have food, and to therefore be a member of a community.

The phrase "lopkupwu"--"to cut down the food-basket"--was another recurring image. Ponapeans store food in baskets hung from roof beams. When a guest arrives, the order is given to "lopkupwu"--cut down the baskets and feed the guest. (Cf. Paul Dahlquist's dissertation [1972], which is entitled "Kohdo mwenge," a Ponapean greeting which means literally "Come eat.") Lopkupwu connotes more than merely cutting down the basket and offering the food, however. The phrase refers, in a broad sense, to the Ponapean concepts of hospitality and generosity, and even more broadly to the whole notion of Ponapean "tiahk"--"culture."

There are really two kinds of tiahk, some Ponapeans say. One is "tiahk en wahu"--the tiahk of "honor" or "respect." This form might best be translated as "custom." It refers to ritual proprieties, e.g., the way a feast is to be conducted, and is the sort of thing that one learns as one becomes a mature person involved in the formal life of the community. The second tiahk, a friend explained to me, is "tiahk en Pohnpei"--literally "Ponapean culture." Used in this latter sense, tiahk does not refer to formal behavior so much as it implies being Ponapean in values, attitudes, beliefs, and general behavior. And lopkupwu--"cutting down the basket"--is, my friend suggested, one of the central characteristics of this Ponapean culture. "Ponapean culture cannot be destroyed (ohla). Some of the apparent aspects of it--the tiahk en wahu, the ritual and political formalities--will change, of course. These may become less dramatic than they are now and perhaps lose some of their importance. But the Ponapean way of being--the tiahk en Pohnpei--doesn't change very much. We still take care of each other." Then in what is a Ponapean variation on the Socratic method, he made a seemingly absurd statement that forced me to put what he was telling me to use. "I am not Ponapean, how can I do (or act according to) Ponapean culture?"

I pondered this awhile and then asked if he was telling me that he is part Indonesian (his father's father came to Ponape from Indonesia or Malaya--no one seems quite sure). "Yes. I'm only part Ponapean."

"But," I responded, "blood doesn't matter. Your parents were born here, you were born here."

"Which is important, then, blood or culture?"

"It seems to me that it's what little children learn as they grow."

"Ah, so you do understand what I am saying about Ponapean culture. You see, that which is on the surface, that which is apparent, the ritual formalities we learn as adults, for example, those are the parts of culture that change. But what lies underneath this, making us Ponapeans--the real tiahk--that doesn't change. This is what we learn when we are children, as we become Ponapean. We may take on new things, like money, and on the surface it will appear that we have changed. But it's still Ponapeans who are using the money and the way that we use it is still Ponapean. Ponapean culture can't be destroyed."

At the heart of this resilient culture is generosity, hospitality, "taking care of each other," "cutting down the food-basket." And Ponapeans employ this deep-seated expectation of generalized benevolence in explaining other aspects of their culture. I used as an example of Ponapean self-criticism the ironic observation that little economic development would take place unless all the breadfruit trees were cut down. I first heard that in 1974. It was repeated it to me in 1983, but in a very different context.

"Ponapeans resist changes. We try to keep foreign things at a distance. We work to preserve our tiahk, and I don't mean the feasts and ritual formalities. I mean that we preserve our traditional ways of treating each other and taking care of each other. In fact, one of the reasons that so little seems to get accomplished here is that it's so easy for us to go off on a visit. We can go anywhere and know that we'll get fed, without any worries about whether we've gotten much work done. We can always depend upon lopkupwu--someone will cut down a basket for us. This is the nature of Ponapean culture; it is what we are trying to preserve."

When a Catholic priest with a deeply empathic knowledge of Ponapean culture delivered a sermon centered on the New Testament story of Mary and Margaret, the two sisters who quarreled over whether it was better to attend to the demands of hospitality or to sit and listen to Jesus preach, he spoke at length about Ponapean hospitality and the stress laid upon community service. "It is easy for you to get so caught up in the welcome (kasamwoh) that your responsibilities to your own families are set aside," he warned. Someone commenting about the quality of the sermon, later that day, chortled about the references to Ponapean welcomes. "Yeah, that sure sounds like Ponapeans. We really like to give things away to other people--that's what we think welcomes are for."

There is in all of this the Ponapeans' dramatic sense that their culture is distinct from the ways of other peoples, particularly Americans. Ponapeans have a degree of admiration for Western technology and the efficiencies of its social organization, but they quite specifically wish to avoid being swallowed up by them. They are dubious about the nature of progress. It was precisely this sort of historical and cultural reflection that characterized their analysis of the issues entailed in the plebiscite.

In my earlier paper, I stressed the Ponapean desire to keep the body politic small, so that communities may exercise direct oversight of their leaders. The internal organization of the Ponapean community emphasizes egalitarianism and generosity, the spirit of lopkupwu. Ponapeans perceive this habit of taking care of each other as fundamental to their culture, so much so that at times it actually seems counterproductive; this sense of being well taken care of is so complete that it is sometimes blamed for fostering irresponsibility. But this apparent irresponsibility is for Ponapeans the stuff of freedom. Generosity has two faces: that which is sometimes constricting, when demands must be met, is at other times liberating, when someone else has shouldered the burden.

Despite my attempts to place in their proper context the various concepts Ponapeans used in their analyses of Free Association, the very fact of *my* analysis draws these concepts out of context. Kopwel, manaman, and kanengamah all exist within the broader context of Ponapean social life. Each in its own way is an aspect of the dignity with which so many Ponapeans try to conduct their lives. I have tried to show that most Ponapeans did not lose sight of this dignity as they made their decisions. The great emphasis they place upon responsibility to the community is but one face of a two-sided coin. The second is the community's freedom: both its inherent right to be self-governing and the right of every one of its members to have a part in governing it. Within the context of the Ponapean community, kopwel connotes responsibility, manaman connotes liberty, and kanengamah connotes respect for both the self and the other. Within this community of shared responsibility and respect, the Ponapeans find autonomy.

Conclusion

This, then, was the context of the 1983 plebiscite on the Compact of Free Association. Ponapeans scrutinized the terms of the Compact, discussed them at length, analyzed the conditions under which they were being told to vote, and a majority decided that Free Association did not adequately fulfill their requirements for self-government. I have tried to demonstrate both that the Ponapeans evaluation of those conditions was quite objective and thoroughgoing, and that their decision was made on the basis of their own values, not the preconceptions of those who drafted the Compact.

The Honolulu Advertiser (June 23, 1983) pronounced Ponape's vote a "sour note." It is unfortunate that this brave attempt at self-determination should be so misunderstood, but the error may be acute testimony to our disenchantment with our own civilization. "People fascinated by the idea of progress," writes Milan Kundera, "never suspect that every step forward is also a step on the way to the end and that behind all the joyous 'onward and upward' slogans lurks the lascivious voice of death urging us to make haste." Perhaps it is just because the Ponapeans are only marginally fascinated by the idea of progress that they see it so clearly as the way to an end they do not seek.

NOTES

Acknowledgements: The Wenner-Gren Foundation for Anthropological Research funded the 1983 research on Ponape. Analysis of this material was supported in part by a National Endowment for the Humanities Fellowship for College Teachers. As always, I wish to thank the people of Ponape for their unceasing hospitality, friendship, and guidance. My wife, Victoria Garcia Petersen, has helped me with this work in more ways than I can hope to acknowledge.

1. The ballot was in two parts. The first part asked whether the voter approved ("Yes") or disapproved ("No") the Compact of Free Association. The second part asked if, in the event of the Compact's defeat, the voter wished the FSM government to pursue independence or some other relationship with the U.S. In Ponape State their were 4,830 votes for independence on the second half of the ballot, 1,916 for some other relationship.

2. The exceptions are small groups that speak Mortlockese (a Trukese dialect) and the Polynesian dialects of Nukuoro and Kapingamarangi atolls.

3. The Book of Luelen (Bernart 1977) is a Ponapean history of Ponape. While it has a chronological framework, its emphasis is on places, not chronicity.

4. The expatriate American community in Ponape State, which consists almost entirely of government employees and their families, was largely of the opinion that differences between Free Association and independence are inconsequential.

5. These figures exclude the vote in Kosrae, which was still administered as part of Ponape District in 1975.

6. Unlike the other plebiscites in which it has played a part, the UN did not supervise the Micronesian plebiscites. It had only observer status. There is a difference of opinion about why this was so.

7. Opposition to long-term U.S. military control of Micronesia has been widespread in the FSM. As recently as July 1982, the UN Visiting Mission encountered it among the general population and at every level of government (Trusteeship Council 1983:7-11). While the issue is complex (even a member of the U.S. delegation to the UN misinterpreted the relevant parts of the Compact), Ponapean sentiments about it do not seem to have wavered.

8. Ponape has a privately-owned television station (the radio station is government-owned and -operated) that broadcasts to about one hundred subscribers in Kolonia.

9. This "unilateral termination" does not include the provisions for U.S. military control, i.e., "deniability." These can only be terminated by "mutual agreement" of both the FSM and the U.S.

10. Some of Santos's language is drawn from the Preamble to the FSM Constitution, which reads in part, "Our ancestors, who made their homes on these islands, displaced no other people." The Ponapeans' name for their island is Pohn Pehi, which refers to an account of their ancestors, who built up the island "upon an altar"--"pohn pehi"--that had been raised atop a stone they found jutting out of the sea.

11. See note 1.

12. Only one Ponapean told me how he was going to vote before the plebiscite. He said that he would vote for Free Association and independence, on the two parts of the ballot, in order to bring Trusteeship to a sooner, rather than later, end. I know him well enough to have doubts about whether he actually voted this way. Kedrus, who told me the story about "mwein America," told me how he voted shortly after he had done so but before the polls had closed.

13. One of the first decisions made during the Ponapean Constitutional Convention in 1983 was to draft the Constitution in Ponapean. This was done expressly as a means of ensuring that the Ponapean Constitution serves Ponapean cultural needs.

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Senator **Warner**. Thank you, Mr. Petersen.

We will now hear from Mr. Leslie Dunbar, Minority Rights Group, New York, Incorporated.

Mr. Dunbar.

STATEMENT OF LESLIE W. DUNBAR, ON BEHALF OF THE MINORITY RIGHTS GROUP/USA

Mr. **Dunbar**. We have filed a formal statement with you and would ask that it be made a part of the record, Minority Rights Group/USA, which I am representing. I am a Board Member.

It has published a report about Palau, which has been sent to every member of your committee. We have testified twice before your committee on these Micronesian matters. And my position is—and perhaps this is why I'm last on the program. Our position is this compact should not be approved, not in its present form.

We say that because we do not think that this compact is the way a strong power should treat weak and minority people.

Since the inception of our trusteeship 47 years ago, which was the only strategic trusteeship under the United Nations, and is the only remaining trusteeship out of the U.N. process, we had treated the people of Micronesia and we have treated their land as military assets; either for use they can be to us or to keep their land and their resource from being used by others. Under this compact that will continue.

Second, if I may use a blunt word at this late hour of the day, this Compact of Free Association is an hypocrisy.

One of our friends from the Marshall Islands said this morning we are free and sovereign people. They are not. And you need only to thread your way through some of the provisions, like title II of the compact with its talk of certifications and audits and reports to the President, those are not the marks of a free people.

Instead of a free association, what we have actually created here is a kind of a form of semiannexation.

And three, and finally, if anything came through, Mr. Chairman, from the hours of testimony that I have listened to—in fact, the interest that I didn't know that I had to listen to this today—is that Micronesian people are economically dependent people, and that that dependency has not been alleviated by 47 years of American trusteeship.

One gentleman said this morning there's not a cent of investment capital, other gentlemen gave other examples.

Members of this committee are experienced and knowledgeable people, I believe you cannot read this compact without understanding that this compact will fasten dependency, economic dependency on these people.

And we think that treating these persons and their land as military assets and treating then in a way that will continue their dependency for many, many years—our purpose is not worthy of this, we urge you to reject this compact in this format. Thank you.

[The prepared statement of Mr. Dunbar follows:]

BEFORE THE
U.S. SENATE COMMITTEE
ON
ENERGY AND NATURAL RESOURCES
RE: S.J. RES. 286

STATEMENT OF L. W. DUNBAR
FOR THE
MINORITY RIGHTS GROUP/U.S.A.

MAY 24, 1984

My name is Leslie W. Dunbar and I am representing the Minority Rights Group/U.S.A., of which I am a Board member. Our parent organization, headquartered in London, has through a long series of special studies become widely recognized for the high quality of its works. Our chapter came into being for the purpose of reporting on and taking appropriate action regarding minority problems within the responsibility of the United States. Persons experienced in American civil rights and liberties compose our board; their names are shown in the Appendix and it is on their behalf that I am testifying today. In the short time we have been active we have published reports on Haitian refugees and Puerto Ricans living here on the mainland. We have also been unavoidably concerned with the condition of the Micronesian people under U.S.A. trusteeship, one result of which has been the recent publication of a monograph, Micronesia: The Problem of Palau, which has previously been sent to each member of this Committee.

Minority Rights Group/U.S.A. appreciates this opportunity to appear before this Committee. We have testified twice on Micronesian matters before the U.N.'s Trusteeship Council -- most recently just this week -- and did so there within the context of the questions the United Nations must confront and decide upon. Here we would like to speak within the context of the interests of the United States. Our conviction is that S.J. Res. 286 does not serve those interests, or at least none that is worthy of our republic.

By plebiscites of June 21, 1983 and September 7, 1983 the peoples of the Federated States of Micronesia and of the Marshall Islands apparently thought that these compacts of so-called "free association" were to their interest. That is a judgment only they and posterity can make. I do suggest to this Committee, however, the obligation upon you to determine whether those concurrences were, if not coerced, at least induced by our overwhelming power and influence, and whether, to the island people who voted for their terms, they had not come to seem merely the best they could get. In any case, the Compact is -- as I do not need to tell you -- so exceedingly long and complex that even a most sophisticated electorate could hardly know what it was voting on.

I suggest to you four questions as to whether our national interest is served by S.J. Res. 286.

First. Are we allowing our international affairs to be dominated by military perceptions to the exclusion of all else?

Second. Is the invention of the political form -- "free association" -- a Pandora's box of troubles?

Third. Have we saddled ourselves with an economic dependency which predictably will last as long as these Compacts last?

Fourth. Do we -- after all these years -- now propose to discharge our Trusteeship responsibilities in a way that is indefensible within the international community and which will serve badly our needs as a world leader requiring the confidence of smaller nations?

I shall be brief in my own discussion of these questions, for I seek not definitively to answer them but to establish their importance with you.

As to the first, the historical record is clear, whatever may be the rhetorical flourishes of the "whereas" clauses and the preamble of S.J. Res. 286. Our Micronesian trust was a "strategic" trust -- the only one established by the United Nations --; the only purpose it has ever had for us is as a part of our Pacific war deterrence or war fighting preparations. That purpose is fully at the forefront of this proposed Compact, as is made explicit in its Title III.

We have no wish to criticize the manner in which the Senate organizes itself to do its work, but there is an air of unreality in the submission of the Compact to this Committee rather than to the Senate's Armed Services or Foreign Relations Committees. I say that only as to the symbolism and appearance of the matter, not as to its substance, for certainly this Committee's membership includes some of the ablest of Senators and some of the most knowledgeable about foreign and security affairs.

But there can be and should not be any disguising the fact that this Compact is primarily designed not for the welfare of the Micronesian people but for the perceived military convenience of the United States. In that respect, what the government is proposing to do here -- and what we are asking the United Nations to legitimate -- is like what we and the British did to the inhabitants of Diego Garcia.* We are imposing upon a weak people, themselves uninvolved in the rivaly of the superpowers, an indefinite and probaly irrevocable alteration of their lives and societies. Our trusteeship has become identified with our military self-interest.

What need have we for this further solidifying of our military presence so far from our own shores? What need have we for this added increment to the arms race that we, in our better moments, so dread?

More than twenty years ago, the late Justice William O. Douglas wrote:

> We witness in this half of the century a great emergence of new nations. ... They are weak, inexperienced, fragile. They came into their inheritance at a time when world forces are aligned into powerful blocs that might make these new countries pawns in the old game of power politics. Many at least remember the old African proverb, "When the bull elephants fight, the grass is trampled down."

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*See the MRG Report, Diego Garcia: A Contrast to the Falklands, London, 1982.

It cannot, we think, be in America's long or even short run national interest to involve more and yet more of the world's peoples and territories in the military competition between us and the Soviet Union. In that direction lies only the imminence of danger to peace yet more awful.

Second, the Constitution of the United States knows about "states" and knows about "territories". Nothing within it gives us any guidance at all regarding "free associations". Years ago, we invented a novel status and called it "Commonwealth". Does the troubled history of the Commonwealth of Puerto Rico encourage us in the path of yet further inventions? It is hypocrisy, unworthy of this country or its commitment to democratic institutions, to call this a compact of "free association". One need only to thread his way, for example, through the complex terms of Tittle II to see the emptiness of that terminology. The elaborate scheme there set out, of "grants", certifications of expenditures and concurrences in plans (sec. 211 a & b), annual reports to our President and Congress (sec. 211 c), and the like has nothing "free" about it. We are simply continuing the dependence of Micronesia under another name.

What this Compact amounts to, in short, is a plan of ours to annex what we want of the Federated States of Micronesia and of the Marshall Islands, while shedding some personal responsibilities and administrative chores we do not want. The provisions of the Compact's Tittle III cement and fully make clear that interest.

Third, to that end we commit ourselves to pay a price. In truth, the price will be larger for the Micronesian people than for us, for though we perhaps can afford the millions in grants, they will pay the price of continual economic dependence.

There could be no more telling verdict on the failure of our trusteeship than the fact implicity acknowledged by the Compact, that after nearly forty years Micronesia cannot come close to supporting itself. If one looks only at the grants proposed under Sec. 211, disregarding the many others scattered throughout the Compact's terms, one discovers a per capita subsidy in the order of $1,000 per year. And that is only a part of the subsidy. What have we achieved during all these years, in the way of leading these people to self-sufficiency? It has sometimes been said that our Presidential election in 1980 was decided when Mr. Reagan asked the American people "are you better off than you were." I think we would not want the Micronesian people to be asked that same question.

Since the 16th century, they have endured foreign occupations and control: Spanish, German, Japanese, now ours. The difference has been -- and it is really the only difference -- that whereas earlier occupiers exploited them, we have made dependents of them. The grants and other subventions of the Compact will fasten that dependency on them. Were they simply cut lose, the pain would be undoubtedly acute, but likely not so long lasting. It is astonishing that this administration, so dedicated as it professes to be to self-reliance, does not think so. What must be recognized is that the dollars we propose to pay are not for Micronesians' welfare, but for our continued military use of their land. And they will not likely let us ever stop, as long as the Pentagon sees a need for their territory.

Fourth, in 1947 we accepted the Trusteeship of a single territory. If the government's plans go to completion, we shall turn that into four politically fragile, economically hopeless, states. I shall leave to critics from the other lands the suspicion that this has been a conscious policy of divide and conquer. The fact is that four political structures of some sort will have been created, none of which can realistically treat with us, negotiate with us, with any semblance of equity or even dignity.

One jurisdiction has so far been intractable. That is, as you know, Palau. The government had hoped to cover it also under this same Compact. The people of Palau have so far not agreed. Their refusal is because of Title III, and in particular Sec. 314. Palau has adopted a constitution that makes its territory nuclear-free. Our government regards that as intolerable.

If these Compacts are approved, the Congress of the United States will have joined forces with the administration in an attempt to coerce the Palauans. They will have been left isolated, will have been shown where the "goodies" lie, of which they are to be deprived. We urge upon you, at the very least, that neither this Compact nor any revision of it be approved until and unless it be re-shaped in such way an accord with the Palaun constitution, so that the United States will have demonstrated to a skeptical world our willingness to take seriously the desires and the ideals of a struggling people.

I thank you for hearing our views.

APPENDIX

Board of Directors
Minority Rights Group/U.S.A.

M. D. Taracido, Chair

Practicing Attorney, New York City. Former Executive Director, Puerto Rican Legal Defense Fund

William J. Bulter

Practicing Attorney, New York City. Chairman, American Section of the International Commission of Jurists

Dick Clark

Former U.S. Senator from Iowa

Leslie Dunbar

Writer; Visiting Scholar for the United Negro College Fund. Fomer Executive Director of the Southern Regional Council and the Field Foundation.

Jack Greenberg

Executive Director, NAACP Legal Defense and Education Fund

Vincent McGee

Consultant to foundations. Board member (former Chairman) of Amnesty International/U.S.A.

Mario Obledo

Former Executive Director of the Mexican American Legal Defense and Education Fund

William Robinson

Executive Director, Lawyers' Committee for Civil Rights Under Law

Senator **Warner**. Thank you.

We thank all of those in attendance today, and we thank the committee staff. The record will be open for 2 weeks.

[Whereupon, at 6 p.m., the hearing adjourned, subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Compact Of Free Association Subsidiary Agreements

Compact Of Free Association Multilateral Agreements

Office for Micronesian Status Negotiations
Washington, D.C. 20240
1983

Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 131 of the Compact of Free Association

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Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 131 of the Compact of Free Association

This Agreement is concluded by the Signatory Governments and sets forth their respective authority and responsibility with regard to the provision of telecommunication services by the Government of the United States to the Government of the Marshall Islands and to the Government of the Federated States of Micronesia as authorized by Section 131 of the Compact of Free Association (the Compact).

Article I

Definitions

1. The definition of terms set forth in Article VI of Title Four of the Compact are incorporated in this Agreement.

2. For the purposes of this Agreement only, the following term shall have the following meaning:

"International Telecommunication Union (ITU) Administration": is for the purposes of this Agreement the Government of the United States.

Article II

Authority and Responsibility

1. The Governments of the Marshall Islands and the Federated States of Micronesia, which are competent and capable under Section 121 of the Compact to conduct foreign affairs in their own name and right with respect to, among other things, communications, have requested that the Government of the United States act as their agent with regard to the provision of certain communications services set forth in Section 131 of the Compact.

2. The Government of the United States shall provide telecommunication services to the Governments of the Marshall Islands and the Federated States of Micronesia as authorized by Section 131 of the Compact. Pursuant to Section 131, the Government of the United States shall represent the interests of the Governments of the Marshall Islands and the Federated States of Micronesia before the International Telecommunication Union (ITU) and other administrations concerned with international telecommunication in matters pertaining to the International Telecommunication Convention.

3. When the Government of the United States acts on behalf of the Government of the Marshall Islands or the Federated States of Micronesia pursuant to paragraph 2 of this Article, the Government of the United States shall act in accordance with the provisions of the laws and regulations of the United States which the Government of the United States determines are applicable to the Marshall Islands or the Federated States of Micronesia at such time. The actions of the Government of the United States shall be consistent with the following:

a. Prior to the Government of the United States acting on behalf of the Government of the Marshall Islands or the Federated States of Micronesia in its capacity as ITU Administration, wherever preparation for, or representation at plenipotentiary or administrative conferences of the Union is concerned, the Government of the United States shall consult with the Government concerned on matters which in the opinion of the Government of the United States relate to or affect any such Government. These consultations shall occur in order for the Government of the Marshall Islands or the Federated States of Micronesia to present its views to the Government of the United States which shall consider these views when developing United States proposals and positions in connection with the conference preparatory efforts cited hereinbefore. No consultations need be undertaken in respect to matters which, in the opinion of the ITU Administration arise by virtue of due application of the regulatory provisions of the international Radio Regulations then in force.

b. The Government of the United States shall notify the Government of the Marshall Islands or the Federated States of Micronesia of significant actions of the ITU and other administrations which the Government of the United States regards as relating to or affecting such governments.

c. When developing those rules and regulations of the United States which may be applicable to the Government of the Marshall Islands or the Federated States of Micronesia pursuant to paragraph 2 of this Article, the Government of the United States shall give prior notice of its intentions to the Governments of the Marshall Islands and the Federated States of Micronesia and shall take into account all views expressed by or on behalf of the Government of the Marshall Islands or the Federated States of Micronesia in connection with the relevant rulemaking proceedings.

d. The provisions of Section 421 of the Compact shall apply, and the Government of the United States shall confer promptly at the request of the Government of the Marshall Islands or the Federated States of Micronesia and that government shall confer promptly with the Government of the United States on matters relating to this Agreement except in respect to matters which, in the opinion of the ITU Administration, arise by virtue of due application of the regulatory provisions of the International Radio Regulations then in force.

e. For the purpose of carrying out the provisions of this Agreement, Competent Authorities shall be designated by each of the Signatory Governments. The Competent Authority of the Government of the United States and the Competent Authority of the Government of the Marshall Islands or the Federated States of Micronesia may communicate directly with each other. The designation by a government of its Competent Authority will be communicated in writing to the other signatory governments, and such designation may, from time to time, be amended.

4. a. The authority and responsibility of the Government of the United States pursuant to paragraph 1 of this Article is without prejudice to the authority and responsibility of the Government of the Marshall Islands or the Federated States of Micronesia with regard to telecommunication in the Marshall Islands or the Federated States of Micronesia, except as may otherwise be required by the International Telecommunication Convention as completed by the Administrative Regulations.

b. The Governments of the Marshall Islands and the Federated States of Micronesia shall develop, prior to conducting any telecommunication activity in the Marshall Islands or the Federated States of Micronesia, respectively, standards and procedures, as recommended by the Government of the United States, which shall be consistent with the ITU Convention inasmuch as this Convention is a treaty obligation of the ITU Administration for the Governments of the Marshall Islands and the Federated States of Micronesia. In developing, implementing and maintaining these standards and procedures, the Governments of the Marshall Islands and the Federated States of Micronesia shall take whatever steps may be required by the ITU Convention, as completed by the Administrative Regulations, such that the ITU Administration for the Governments of the Marshall Islands and the Federated States of Micronesia may fully meet its obligations under that Convention.

Article III

Transition

1. Upon receipt of notice pursuant to Article IV of this Agreement from the Government of the Marshall Islands or the Federated States of Micronesia, the Government of the United States shall assist the requesting government in obtaining membership in the ITU. After receipt of notice from the ITU of the requesting government's qualification to act, the Government of the United States shall take such actions as may be necessary to transfer to the electing government all relevant obligations and rights.

2. Upon termination of the functions enumerated in Section 131 of the Compact by the Government of the United States, the applicability of all laws of the United States, and of its regulations, practices, policies, treaties, conventions, and arrangements which are applicable to this Agreement shall cease to be applicable in the territory of the Government which has given such written notice, and any authority and responsibility of the Government of the United States in respect to such services shall also cease.

Article IV

Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact.

2. The provisions of this Agreement may be amended:

(a) as to the Governments of the Marshall Islands and the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement; and

(b) as to the Government of the Marshall Islands or the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement. The effect of any amendment made pursuant to this subsection shall be restricted to the relationship between the Governments agreeing to such amendment, but the other Governments signatory to this Agreement shall be notified promptly by the Government of the United States of any such amendment.

3. This Agreement shall remain in force for a period of fifteen years, subject to Section 231 and Article IV of Title Four of the Compact and in the absence of action to the contrary by a Plenipotentiary Conference of the ITU, unless terminated by a signatory Government in the following manner:

(a) Termination of this Agreement by any signatory Government shall be effected by a written notification to either the Government of the United States or to the Government of the Marshall Islands or the Federated States of Micronesia, as appropriate. The Government of the United States shall notify the other signatory Governments of such notification;

(b) Termination shall take effect as mutually agreed or one year after the recipient Government has been notified, but not before receipt of notice from the ITU of the requesting governments qualification to act; and

(c) This Agreement shall continue in force as between the Government of the United States and the remaining signatory Governments.

4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States, the Government of the Government of the Marshall Islands and the Government of the Federated States of Micronesia. Each Government accepting this Agreement shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement Regarding the Provision of Telecommunication Services which shall come into effect in accordance with its terms between the Government of the United States and the other Governments signatory to this Agreement.

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE FEDERATED STATES OF MICRONESIA

Agreement Regarding the Provision of Telecommunication Services of the Government of the United States to Palau, the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 131 of the Compact of Free Association

DONE AT Majuro, Marshall Islands, this 25th day of June, one thousand, nine hundred eighty-three

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

- - - - - - -

DONE AT Majuro, Marshall Islands, this 25th day of June, one thousand, nine hundred eighty-three

FOR THE GOVERNMENT

OF

THE MARSHALL ISLANDS

A-1

Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 131 of the Compact of Free Association

AGREED MINUTE

The Signatory Governments agree that in order to facilitate common carrier, including satellite, telecommunications in the Marshall Islands and the Federated States of Micronesia, this Agreement shall be amended as to the matter of United States Federal Communications Commission (FCC) jurisdiction in the Marshall Islands and the Federated States of Micronesia.

Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 132 of the Compact of Free Association

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Agreed Minute

Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 132 of the Compact of Free Association

This Agreement is concluded by the Signatory Governments and sets forth their respective authority and responsibility with regard to the operation of telecommunication services of the Government of the United States in the Marshall Islands and the Federated States of Micronesia as authorized by Section 132 of the Compact of Free Association (the Compact).

Article I

Definitions

1. The Definition of Terms set forth in the following documents are incorporated into this Agreement:

a. Article VI of Title Four of the Compact;

b. Paragraph 2 of Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact (the Status of Forces Agreement); and

c. Paragraph 2 of Article I of the Federal Programs and Services Agreement Concluded Pursuant to Sections 221, 224, 225 and 232 of the Compact (the Federal Programs and Services Agreement).

Article II

General Provisions

1. The Governments of the Marshall Islands and the Federated States of Micronesia shall permit the Government of the United States to operate telecommunications services in the Marshall Islands and the Federated States of Micronesia to the extent necessary to fulfill the obligations of the Government of the United States under the Compact.

2. The Government of the United States may take within the Marshall Islands and the Federated States of Micronesia measures for the installation, operation and maintenance of its telecommunication services, including:

(a) the operation and maintenance of all telecommunication facilities, and use of the associated radio frequencies authorized for use or in use upon the entry into force of this agreement;

(b) the installation, operation and maintenance of new or additional telecommunication facilities in the Marshall Islands and the Federated States of Micronesia. Such actions will be coordinated with the respective Government of the Marshall Islands or the Federated States of Micronesia;

(c) the regulation and control of all telecommunications of the Government of the United States, including the licensing of operations personnel; and

(d) the use of codes, ciphers and other means of cryptographic security.

3. The Government of the Marshall Islands and the Government of the Federated States of Micronesia:

(a) Authorize the operation of United States telecommunication facilities, and the provision of frequencies to the Government of the United States shall be free from all license requirements, taxes, duties, fees and charges;

(b) Shall make prompt and reasonable efforts to satisfy requests by the Government of the United States for changes in existing frequencies and for requests for additional frequencies; and

(c) Shall accept as its own, without a test or fee, the permits or licenses issued to United States personnel by the Government of the United States.

4. (a) For the purpose of carrying out the provisions of this Agreement, Competent Authorities shall be designated by each of the signatory Governments. The Competent Authority of the Government of the United States and the Competent Authority of the Gov-

ernment of the Marshall Islands or the Competent Authority of the Government of the Federated States of Micronesia may communicate directly with each other. The designation by a government of the Competent Authority will be communicated in writing to all other signatory governments and such designation may, from time to time, be amended.

(b) In order to harmonize the telecommunication operations of the Government of the United States with those of the Governments of the Marshall Islands and the Federated States of Micronesia, the Competent Authorities shall establish a Joint Telecommunication Board which shall meet at least semi-annually or more often as may be required. The Board will review plans for changes to the respective telecommunication systems of the parties to ensure maximum possible compatibility and interoperability. The United States shall act as the secretariat for this board and shall host the initial meeting of the Board. The secretariat and host for later meetings will be as mutually agreed by the parties.

5. The Government of the United States, through its Competent Authority, shall coordinate proposed major changes to United States telecommunications and extraordinary activities or exercises which would have the potential of causing either electromagnetic or physical interference with other systems used or licensed by the Government of the Marshall Islands or the Federated States of Micronesia. The Government of the Marshall Islands or the Federated States of Micronesia, through its Competent Authority, shall coordinate similiar changes with the United States Competent Authority. The Government of the United States and the Government of the Marshall Islands and the Federated States of Micronesia respectively shall use their best efforts to avoid both electromagnetic and physical interference to each other's telecommunication operations. In the event the Competent Authorities cannot reach a mutually satisfactory agreement through consultations, the matter will be referred to their respective governments for resolution in accordance with the provisions of Article V of Title Three or Article II of Title Four of the Compact as appropriate.

6. Transmitter and receiver antennas installed by the Government of the United States shall be located and constructed so as not to constitute hazards including, inter alia, hazards to air navigation.

Article III

Defense Telecommunication Provisions

1. The Armed Forces of the United States and their United States contractors may take in the Marshall Islands and the Federated States of Micronesia measures for the installation, operation and maintenance of telecommunication services pursuant to Title Three of the Compact and its subsidiary agreements. These measures include the right, as provided for in this agreement, to install, operate and maintain:

(a) Radio communication, radar and telemetry systems including:

(1) Major radio communication facilities as links with the world-wide military network of the United States;

(2) Such other lesser radio-telephonic and telegraphic communication facilities including the Military Affiliate Radio System as may be required for the support of military and administrative services of the Armed Forces of the United States;

(3) Television systems;

(4) Radio facilities for communication with aircraft and surface vessels;

(5) Satellite communications;

(6) Such other broadcast stations contributing to the morale, welfare and training of the Armed Forces of the United States and its contractors, which includes the Armed Forces Radio and Television Service, and short-range broadcast stations; and

(7) Such other telecommunication facilities as may be required from time to time.

(b) Aids to air navigation and airfield approach control systems including electronic navigation and landing aids, such as airport surveillance radars, ground control approach (GCA), TACAN and instrument landing systems (ILS), and other such aids as may be developed and adapted for such use.

(c) Telecommunication equipment in connection with the operation of weather facilities.

Article IV

United States Federal Programs and Services Telecommunication Provisions

United States Federal Agencies and their United States contractors may take in the Marshall Islands and the Federated States of Micronesia measures for the installation, operation and maintenance of telecommunication services in support of United States Federal Programs and Services as set forth in the Agreement concluded pursuant to Sections 221, 224, 225 and 232 of the Compact.

Article V

Effective Date, Amendment and Duration

1. This Agreement shall enter into force simultaneously with the Compact.

2. The provisions of this Agreement may be amended:

(a) As to all of the Governments of the Marshall Islands and the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement; and

(b) As to any ore of the Governments of the Marshall Islands or the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement. The effect of any amendment made pursuant to this subsection shall be restricted to the relationship between the Governments agreeing to such amendment, but the other Governments signatory to this Agreement shall be notified promptly by the Government of the United States of any such amendment.

3. This Agreement shall remain in force in accordance with the following terms:

(a) Articles I, II, III and V of this Agreement shall remain in force as between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia for the period of effectiveness of their respective Military Use and Operating Rights Agreements Concluded Pursuant to Sections 321 and 323 of the Compact; and

(b) Articles I, II, IV and V of this Agreement shall remain in force as between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia for the period of effectiveness of the provisions of Article XIV of the Federal Programs and Services Agreement Concluded Pursuant to Sections 221, 224, 225 and 232 of the Compact.

4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States, the Government of the Government of the Marshall Islands and the Government of the Federated States of Micronesia. Each Government accepting this Agreement shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement Regarding the Operation of Telecommunication Services which shall come into effect in accordance with its terms between the Government of the United States and the other Governments signatory to this Agreement.

DONE AT Honolulu, Hawaii, THIS 30th DAY

OF May, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA

DONE AT Honolulu, Hawaii, THIS 30th DAY

OF May, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE MARSHALL ISLANDS

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT

OF

THE FEDERATED STATES OF MICRONESIA

Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 132 of the Compact of Free Association

AGREED MINUTE

Article II, General Provisions: In the Marshall Islands and the Federated States of Micronesia, permits or licenses issued to United States personnel by the Government of the United States shall be solely for the operation of telecommunication facilities of the Government of the United States.

Article III, Defense Telecommunication Provisions:

(a) The list of activities contained in Article III, paragraph 1 of this Agreement, is a non-exclusive, illustrative listing of the telecommunications activities which the United States may take in the Marshall Islands or the Federated States of Micronesia.

(b) The term "television systems" as used in Article III, paragraph 1 (a) (3) refers only to such systems used for surveillence monitoring, security systems and other such uses, but not including television broadcast stations as addressed in Article III, paragraph 1 (a) (6).

(c) The Government of the United States shall not undertake any actions to install or operate broadcast stations pursuant to Article III, paragraph 1 (a) (6) of this agreement without the prior agreement between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia.

Agreement in Implementation of Section 175 of The Compact of Free Association

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Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of The Compact of Free Association

This Agreement is concluded by the Signatory Governments as an international agreement and sets forth the obligations, duties, and procedures between the Governments of the United States and the Marshall Islands and the Federated States of Micronesia, respectively, regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and transfer of prisoners pursuant to Section 175 of the Compact of Free Association (the Compact).

TITLE ONE

DEFINITIONS

1-1

Article I

Definitions

1. The definition of terms set forth in Article VI of Title Four of the Compact is incorporated in this Agreement.

2. For the purposes of Titles Two, Three and Four of this Agreement only, the following terms shall have the following meanings:

(a) "Signatory Governments" means the Government of the United States and the Government of the Marshall Islands or the Government of the United States and the Government of the Federated States of Micronesia. As used here, the Government of the United States shall include the Governments of the states of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

(b) "Jurisdiction" is used in a geographic sense. The term "jurisdiction of the requesting/requested Government" when applied to the Government of the Marshall Islands or the Federated States of Micronesia, means "the Marshall Islands" and "the Federated States of Micronesia" as defined in Section 461(c) of the Compact.

(c) "Judge" as used in this Agreement shall include any judicial officer of a Signatory Government who has the authority to issue a warrant of arrest or its equivalent.

(d) "Investigation" means an investigation being conducted by a grand jury or by a law enforcement or administrative agency of a "Signatory Government".

(e) "Proceeding" means a proceeding before an administrative or judicial tribunal of a "Signatory Government".

(f) "Resident Representative" means a person so designated by the sending Government pursuant to Section 152(b) of the Compact and serving in that capacity.

TITLE TWO

EXTRADITION

2-1

Article I

Obligation to Extradite

The Government of the United States shall extradite to the Marshall Islands or the Federated States of Micronesia and the Government of the Marshall Islands or the Federated States of Micronesia shall extradite to the United States, subject to the provisions and conditions described in this Agreement, any person found in their respective jurisdictions against whom the requesting Government is proceeding for an offense or who is wanted by that Government for the enforcement of a sentence.

Article II

Extraditable Offenses

1. (a) Extraditable offenses, pursuant to the provisions of this Agreement are:

(1) Offenses listed in the Schedule of Offenses appended to this Agreement which are punishable under the laws of both the requesting and requested Signatory Governments by deprivation of liberty for at least a period exceeding one year or by a more severe penalty; or

(2) Offenses, regardless of whether listed in the Schedule of Offenses appended to this Agreement or not, which are punishable under both the federal laws of the United States and the national laws of the Marshall Islands or the Federated States of Micronesia, respectively, by deprivation of liberty for at least a period exceeding one year or by a more severe penalty.

(b) For purposes of extradition, it shall not matter whether the laws of the requesting and requested Signatory Governments place the offense within the same category of offenses or describe an offense by the same terminology.

2. Extradition shall be granted in respect of an extraditable offense for the enforcement of a penalty or prison sentence if the duration of the penalty or prison sentence still to be served amounts to at least six months.

3. Subject to the conditions set out in paragraph 1 of this Article extradition shall also be granted:

(a) For attempt or conspiracy to commit, or participation as a principal, accomplice or accessory in, any extraditable offense; and

(b) For any otherwise extraditable offense, whether or not the offense is one for which the laws of the United States require proof of interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such considerations being solely for the purpose of establishing jurisdiction in a federal court of the United States.

4. When a request for extradition is granted in respect of an extraditable offense, it may also be granted for an offense which could not otherwise fulfill the requirements of paragraphs 1 and 2 of this Article as related to the period of deprivation of liberty for which the offense is punishable or as related to the duration of the sentence to be served in the jurisdiction of the requesting Government.

5. Extradition shall be granted in respect of an extraditable offense committed outside the territory of the requesting Signatory Government if:

(a) The courts of the requested Government would be competent to prosecute in similar circumstances; or

(b) The person sought is a citizen or national of the requesting Government.

Article III

Exceptions to Extradition

1. Extradition shall not be granted:

(a) When the person whose surrender is sought is being prosecuted or has been convicted, discharged or acquitted by the requested Government for the offense for which extradition is requested; or

(b) When the prosecution of the offense is barred by lapse of time according to the laws of the requesting Government.

2. Subject to paragraph 3 of this Article, extradition may be refused when the Executive Authority of the requested Government, in its sole discretion, determines:

(a) That the offense in relation to which extradition is requested is of a political character; or

(b) That the request for extradition has been made for the purpose of trying or punishing the person whose extradition is sought for an offense of a political character.

3. Extradition shall not be refused on the basis of paragraph 2 of this Article where the offense for which extradition is requested involves a murder or willful crime, including attempts, against the life or physical integrity of a Head of State or Head of Government or any other internationally protected person, including resident representatives, or where the offense for which extradition is sought is one which the requesting Government has the obligation to prosecute by reason of a multilateral treaty or other international agreement.

Article IV

Capital Punishment

When the offense for which extradition is requested is punishable by death under the laws of the requesting Government and the laws of the requested Government do not permit such punishment for that offense, extradition may be refused unless the requesting Government provides such assurances as the Executive Authority of the requested Government considers sufficient that the death penalty will not be imposed, or, if imposed, will not be executed.

Article V

Deferred or Temporary Surrender

After a decision on a request for extradition has been rendered in the case of a person who is being proceeded against or is serving a sentence in the jurisdiction of the United States, the Marshall Islands, or the Federated States of Micronesia for an offense other than that for which extradition has been requested, the requested Government may defer the surrender of the person sought until the conclusion of the proceedings against that person, or the full execution of any punishment that may be, or may have been, imposed; or temporarily surrender the person sought to the requesting Government solely for the purpose of prosecution. The person so surrendered shall remain in custody during the period of surrender and shall be returned at the conclusion of the proceedings against that person in accordance with conditions to be determined by agreement of the Executive Authorities of the affected Governments in each case.

Article VI

Extradition Procedures and Required Documents

1. The request for extradition shall be made to the requested national Government by the requesting national Government on behalf of itself or one or more political subdivisions. The requesting Government shall promptly notify the resident representative of the requested Government of its extradition request. Such requests, supporting documentation and notices shall be in the English language.

2. The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable provisions of the laws of the requesting Government describing the offense and punishment, and a statement of its applicable laws relating to proceedings barred by lapse of time.

3. When the request relates to a person who has not yet been convicted, it shall also be accompanied by a copy of a warrant of arrest issued by a judge or other judicial officer of the requesting Government and by such evidence as would provide probable cause, according to the laws of the requested Government, to believe that the person sought has committed the offense for which extradition is requested.

4. When the request relates to a convicted person, it shall be supported by a copy of the judgment of conviction and evidence establishing that the person sought is the person to whom the conviction refers. If no sentence has been imposed, the request for extradition shall be accompanied by a statement to that effect. If a sentence has been imposed, the request for extradition shall be accompanied by a statement to that effect, by a copy of the sentence or committal order and by a statement showing the portion of the sentence remaining to be served.

5. Documentary evidence from the requesting Government in support of a request for extradition shall be deemed duly authenticated and shall be admissible in evidence in the extradition hearing when it bears a seal of the requesting Government, the authenticity of which is attested to by the resident representative of the requesting Government assigned or accredited to the requested Government, or by the resident representative of the requested Government assigned or accredited to the requesting Government, or by the designee of such a resident representative.

6. The requested Government shall promptly communicate to the requesting Government the decision on the request for extradition.

Article VII

Provisional Arrest or Detention

1. In case of urgency, a requesting Government may apply to the requested Government for the provisional arrest or detention of the person sought pending the presentation of the formal request for extradition. The request may be transmitted to the requested Government by the resident representative of the requesting Government.

2. The application shall contain: a description of the person sought, including, if available, the person's nationality; a brief statement of the facts of the case, including, to the extent possible, the time and location of the offense; a statement of the existence of a warrant of arrest or detention or a judgment of conviction against that person; and a statement of intention to request the extradition of the person sought.

3. On receipt of such an application, the requested Government shall take the appropriate steps to secure the arrest or detention of the person sought. The requested Government shall promptly notify the requesting Government of its action.

4. The proceedings against the person so arrested or detained shall be terminated and that person discharged upon expiration of forty-five days, unless otherwise agreed, from the date of arrest or detention pursuant to such application if the request for extradition referred to in Article VI of Title Two of this Agreement is not received by the requested Government. The requested Government shall sympathetically consider a request for extension not to exceed an additional fifteen days. Such termination and discharge shall not prevent the institution of further proceedings for the extradition of that person.

Article VIII

Rule of Speciality

1. A person extradited under this Agreement shall not be arrested, detained, tried or punished in the jurisdiction of the requesting Government for an offense other than that for which extradition has been granted nor be extradited by that Government to another signatory Government or a third country unless:

(a) That person has left the jurisdiction of the requesting Government after extradition and has voluntarily returned to it;

(b) That person has not left the jurisdiction of the requesting Government within thirty days after being free to do so; or

(c) Upon such conditions as may be prescribed by the requested Government, that Government:

(1) Has consented to the arrest, detention, trial or punishment of that person for an offense other than that for which extradition was granted; or

(2) Has consented to extradition to another signatory Government or to a third country.

2. Paragraph 1 of this Article shall not apply to offenses committed after extradition.

3. Instead of the offense for which a person was extradited, after notice to the requested Government, the person may be tried or punished for a different offense, including a lesser included offense, provided that it is:

(a) Based on the same facts as were set out in the request for extradition and the supporting evidence;

(b) Punishable by no greater penalty than the offense for which the person was extradited; and

(c) An offense referred to in the Schedule of Offenses appended to this Agreement or in paragraph 1 (a) of Article II of Title Two.

Article IX

Multiple Extradition Requests

When requests for extradition of the same person are received from the requesting Government and one or more other Governments, the requested Government shall have the discretion to determine to which Government the person is to be extradited.

Article X

Surrender

When a request for extradition has been granted, surrender of the person sought shall take place within such time as may be prescribed by the laws of the requested Government.

Article XI

Waiver

1. A person whose extraditon is sought may at any time voluntarily waive extradition proceedings. The waiver shall be in writing, endorsed by a judge, and have the effect of a final decision of the requested Government to surrender that person.

2. A certified copy of the waiver shall constitute sufficient authority to maintain the person sought in custody within the jurisdiction of the requested Government and to deliver that person into the custody of the requesting Government.

Article XII

Surrender of Property

1. To the extent permitted under the laws of the requested Government and subject to the rights of third parties, all property relating to the offense shall at the request of the requesting Government be seized and surrendered upon the granting of the extradition. This property shall be handed over even if the extradition cannot be effected due to the death, escape or disappearance of the person sought.

2. The requested Government may make the surrender of the property conditional upon a satisfactory assurance from the requesting Government that the property shall be returned to the requested Government as soon as possible.

Article XIII

Transit

1. Upon prior notice, the Government of the United States shall have the right to transport through the jurisdictions of the Governments of the Marshall Islands and the Federated States of Micronesia persons surrendered by a Signatory Government or a third country.

2. Upon prior notice, the Government of the Marshall Islands or the Federated States of Micronesia shall have the right to transport through the jurisdiction of the Signatory Governments persons surrendered by the Government of the United States or a third country.

3. When such transport is by air and no stop is scheduled in the jurisdiction of a Signatory Government, but is required by extenuating circumstances, no prior notice shall be required.

Article XIV

Expenses

1. The requesting Government shall bear the cost of transportation of the person sought.

2. The appropriate legal officers of the requested Government shall act as counsel for the requesting Government except as otherwise agreed.

Article XV

Extradition of Citizens or Nationals

1. No Signatory Government shall be bound to extradite its own citizens or nationals, but may grant extradition if, in its discretion, extradition is deemed proper.

2. If the requested Government denies extradition solely on the basis of citizenship or nationality, it shall submit the case to its competent authorities for purposes of prosecution.

Article XVI

Relationship with Other Agreements

Offenses committed by United States personnel as defined in the Status of Forces Agreement shall be subject to the provisions of the Status of Forces Agreement only when such personnel are in the Marshall Islands or the Federated States of Micronesia; otherwise the provisions of this Agreement shall govern.

TITLE THREE

JUDICIAL ASSISTANCE

3-1

Article I

Judicial Assistance

1. The United States District Court of the district in which a person resides or is found may order that person to give testimony or a statement or to produce a document or other thing for use in a judicial, administrative or criminal investigation or proceeding in the Marshall Islands or the Federated States of Micronesia.

2. A national court in the Marshall Islands or the Federated States of Micronesia may order a person residing or found within its jurisdiction to give testimony or a statement or to produce a document or other thing for use in a judicial, administrative, or criminal investigation or proceeding in the United States.

3. The order may be made exclusively either pursuant to a letter rogatory issued or a request made by a court of one of the Signatory Governments, or pursuant to a request made by a department or ministry of justice of one of the Signatory Governments.

4. The order may direct that the testimony or statement be given or the documents or other things be produced before a person appointed by the court. By virtue of this appointment, the person appointed has power to administer any necessary oath and take the testimony or statement.

5. The order shall prescribe the procedure for taking the testimony or statement or producing the document or other thing. When requested, the prescribed procedure shall be designed to meet the requirements for admission in evidence of the testimony or statement to be given, or the document or other thing to be produced, in the place where it is sought to be used.

6. A person may not be compelled to give testimony or a statement or to produce a document or other thing in violation of any legal or constitutional right or privilege applicable in the jurisdiction in which the testimony or statement is given, or a document or other thing is produced.

7. This Agreement does not preclude a person from voluntarily giving testimony or a statement, or producing a document or other thing, for use in an investigation or proceeding in the United States, the Marshall Islands, or the Federated States of Micronesia.

8. Letters rogatory, requests and applications for assistance pursuant to this Title shall be in the English language.

TITLE FOUR

EXECUTION OF PENAL SANCTIONS

4-1

Article I

Scope

1. Sentences imposed by courts of the Marshall Islands and the Federated States of Micronesia on citizens or nationals of the United States may be served in penal institutions of the United States or under the supervision of its authorities in accordance with the provisions of this Agreement.

2. Sentences imposed by courts of the United States, or a state thereof, on citizens or nationals of the Marshall Islands or the Federated States of Micronesia may be served in penal institutions of the Marshall Islands or the Federated States of Micronesia, respectively, or under the supervision of its authorities in accordance with the provisions of this Agreement.

Article II

Definitions

For the purposes of this Title only:

1. "Transferring Government" means the Signatory Government from which the offender is to be transferred.

2. "Receiving Government" means the Signatory Government to which the offender is to be transferred.

3. "Offender" means a citizen or national of the Marshall Islands or the Federated States of Micronesia who has been sentenced by a court of the United States, or a state thereof; or a citizen or national of the United States who has been convicted by a court of the Marshall Islands or the Federated States of Micronesia.

4. "Category I Offender" means an "Offender" who comes within the meaning of the term "United States personnel", as that term is defined in paragraph 2(c) of Article I of the Status of Forces Agreement.

5. "Category II Offender" means all "Offenders" other than "Category I Offenders".

6. "State" when used in the sense of a part of the United States means any State of the United States, any territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

Article III

Eligibility

This Agreement shall apply only under the following conditions:

1. That the offense for which the Offender was convicted and sentenced is one which would be punishable in the Receiving Government; provided, however, that this condition shall not be interpreted so as to require that the offense described in the laws of both Governments be identical in those matters which do not affect the nature of the crime.

2. That the Offender be a citizen or national of the Receiving Government.

3. That the Offender has not been sentenced to the death penalty nor convicted of a purely military offense.

4. Except for Category I Offenders, that at least six months of the Offender's sentence remain to be served at the time of petition to transfer.

5. That the sentence be final, that any appeal procedures have been completed, and that there be no collateral or extraordinary remedies pending at the time of invocation of the provisions of this Agreement.

6. That the Offender's express consent, or the consent of a legal representative in the case of a minor or of an Offender who has become mentally incompetent, to transfer has been given voluntarily and with full knowledge of the legal consequences thereof.

7. That, before the transfer, the Transferring Government shall afford an opportunity to the Receiving Government to verify through an officer designated by the laws of the Receiving Government that the Offender's consent to the transfer has been given voluntarily.

Article IV

Transfer Procedures

1. The Signatory Government of which an Offender is a citizen or national shall make each request for transfer of an Offender in writing to the Transferring Government.

2. As to an eligible Category I Offender, no finding of the appropriateness of such consenting Offender's transfer by the Transferring Government shall be required. Once internal arrangements have been completed, the transfer of the Offender shall be effected.

3. As to a Category II Offender, if the Transferring Government considers the request to transfer the Offender appropriate, the Transferring Government will communicate its approval of such request to the Receiving Government so that, once internal arrangements have been completed, the transfer of the Offender may be effected.

4. (a) In deciding whether to request the transfer of a Category II Offender under paragraphs 1 and 3 of this Article and with the objective that the transfer should contribute positively to the Offender's social rehabilitation, the authorities of the Receiving Government will consider, among other factors: the seriousness of the crime; the Offender's previous criminal record, if any; the Offender's health status; and the ties which the Offender may have to the society of the Transferring Government and the Receiving Government.

(b) If the Offender gives his express consent to the transfer, the Transferring Government shall consider the request promptly and approve it in the absence of serious countervailing considerations, which it shall specify.

5. In any case in which a citizen or national of the Marshall Islands or the Federated States of Micronesia has been sentenced by a state of the United States, the approval of such an Offender's transfer pursuant to paragraph 3 of this Article shall be required from both the appropriate state authority and the federal authority.

6. When the Transferring Government does not approve, for whatever reason, the transfer of a Category II Offender, it shall communicate this decision to the Receiving Government without delay.

7. The Transferring Government shall furnish to the Receiving Government a certified copy of the sentence or judgment relating to the Offender. When the Receiving Government considers such information relevant, it may request, at its expense, copies of the trial record, or portions thereof, or such additional information as it deems necessary. The Transferring Government shall grant such requests to the extent permissible under its laws.

8. Delivery of an Offender by the authorities of the Transferring Government to those of the Receiving Government shall occur at a place agreed upon by the two Governments. The Receiving Government will be responsible for the custody and transport of the Offender from the Transferring Government.

9. The Receiving Government shall not be entitled to any reimbursement for the expenses incurred by it in the transfer of an Offender or the completion of the Offender's sentence.

Article V

Execution of Sentence

1. An Offender delivered for execution of sentence under this Agreement may not again be detained, tried or sentenced by the Receiving Government for the same offense for which the sentence was imposed by the Transferring Government.

2. Except as otherwise provided in this Agreement, the completion of a transferred Offender's sentence shall be carried out according to the laws and procedures of the Receiving Government, including the application of any provisions for reduction of the term of confinement by parole or conditional release.

3. Each Signatory Party may request reports indicating the status of confinement of all Offenders transferred by it under this Agreement, including in particular the parole or release of an Offender. A Transferring Government may, at any time, request from the Receiving Government a special report on the status of the execution of an individual sentence.

Article VI

Review or Modification of Sentence

The Transferring Government shall retain exclusive jurisdiction over the sentences imposed and any procedures that provide for revision or modification of the sentences pronounced by its courts. The Transferring Government also shall retain the power to pardon or grant amnesty or clemency to an Offender. The Receiving Government, upon being informed of any decision in this regard, will put such measures into effect.

Article VII

Transit

1. Upon prior notice, the Government of the United States shall have the right to transport through the jurisdictions of the Governments of the Marshall Islands and the Federated States of Micronesia Offenders being transferred by a Signatory Government or a third country.

2. Upon prior notice, the Government of the Marshall Islands or the Federated States of Micronesia shall have the right to transport through the jurisdiction of the Signatory Governments Offenders being transferred by the Government of the United States or a third country.

3. When such transport is by air and no stop is scheduled in the jurisdiction of a Signatory Government, but is required by extenuating circumstances, no prior notice shall be required.

TITLE FIVE

EFFECTIVE DATE, AMENDMENT AND DURATION

5-1

Article I

Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact.

2. This Agreement may be amended at any time as to the Government of the Marshall Islands or the Federated States of Micronesia by mutual consent of such Government and the Government of the United States.

3. Titles One, Two and Three of this Agreement are effective as to the Signatory Government until terminated by that Government, in the following manner:

(a) Termination of this Agreement by any Signatory Government shall be effected by a written notification to either the Government of the United States or to the Government of the Marshall Islands or the Federated States of Micronesia, as appropriate. The Government of the United States shall notify all other Signatory Governments of each such notification.

(b) Termination shall take effect one year after the recipient Government has been notified, but this Agreement shall continue in force as between the Government of the United States and the remaining Signatory Governments.

4. Titles Four and Five of this Agreement are effective for the period of effectiveness of the Status of Forces Agreement, except for those provisions relating to Category II Offenders which may be terminated in accordance with paragraph 3 of this Article.

5. This Agreement may be accepted, by signature or otherwise, by the Government of the United States, the Government of the Marshall Islands and the Government of the Federated States of Micronesia. Each Government accepting this Agreement shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions which shall come into effect in accordance with its terms between the Government of the United States and the other Governments signatory to this Agreement.

Appendix A

SCHEDULE OF OFFENSES

1. Offenses against the laws relating to homicide, including murder, manslaughter and causing death by criminal negligence.

2. Offenses against the laws relating to assault, wounding, maiming or causing grievous bodily harm.

3. Rape; indecent or sexual assault; incest; bigamy.

4. Unlawful sexual acts with or upon children under the age specified by the laws of both the requesting and requested Governments.

5. Willful nonsupport or willful abandonment of a minor or other dependent person when such person is or is likely to be injured, or the life of that person is or is likely to be endangered.

6. Kidnapping; abduction; false imprisonment.

7. Offenses against the laws relating to abortions.

8. Offenses against the laws relating to robbery, theft, breaking and entering, burglary, embezzlement, larceny or extortion.

9. Offenses against the laws relating to fraud, breach of trust, fraudulent conversion, or obtaining property, money or securities by fraud or false pretenses.

10. Offenses against the laws relating to bribery, payment of commissions or gratuities, or conflict of interests.

11. Offenses against the laws relating to the receipt or possession of property, including money or securities.

12. Offenses against the laws relating to counterfeiting or forgery.

13. Offenses against the laws relating to perjury, including subornation of perjury, making a false affidavit, statement, or statutory declaration.

14. Offenses against the laws relating to arson.

15. Offenses against the laws relating to obstruction of judicial proceedings or proceedings before governmental bodies; interference with the investigation of a violation of a statute by influencing, bribing, impeding, threatening or injuring by any means any officer of the court, juror, witness or duly authorized investigator.

16. Offenses against the laws relating to the escape of persons.

17. Any act or omission intended or that is likely to:

(a) endanger the safety of an aircraft in flight or of any person on board such an aircraft, or

(b) destroy or render any aircraft incapable of flight.

18. Offenses against the laws relating to unlawful seizure or exercise of control of an aircraft.

19. Offenses against the laws relating to piracy, mutiny, or revolt on board a vessel.

20. Offenses against the laws relating to civil disorder and riot.

21. Offenses against the laws relating to willful damage to property.

22. Offenses against the laws relating to bankruptcy.

23. Offenses against the laws relating to usury.

24. Offenses against laws relating to securities and commodities.

25. Offenses against the laws relating to the traffic in, production, manufacture, or importation of narcotics, dangerous drugs, controlled or restricted substances, including their derivatives and similar synthetic preparations.

26. Offenses against the laws relating to firearms and other weapons, ammunition, explosives, incendiary devices or nuclear material.

27. Offenses relating to willful evasion of taxes or duties.

28. Offenses against the laws relating to importation, exportation or transit of goods, articles, or merchandise.

29. Offenses against the laws relating to competition and trade practices.

B-1

Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of The Compact of Free Association

Agreed Minute

Title Three, Article I, Judicial Assistance, paragraph 6: In the Federated States of Micronesia the term "any legal privilege" shall include any legal or constitutional right or privilege.

Article XVI, Relationship with Other Agreements: Article XVI of this Agreement makes it clear that "United States personnel" (within the meaning of the Status of Forces Agreement [SOFA]) who commit offenses while in the Marshall Islands or the Federated States of Micronesia, shall be subject to the applicable provisions of the SOFA. If a person who comes within the SOFA definition of "United States personnel", other than a member of the force, returns to the United States and is no longer subject to the SOFA, the provisions of the extradition agreement would apply. If, however, the offender is a member of the force at the time of the extradition request, it is contemplated that the Executive Authority would not exercise its authority to extradite the offender, but would refer the case to the military authorities for disposition in accordance with the provisions of the SOFA.

Article XVI of the Extradition Agreement is without prejudice to the provisions of the SOFA which otherwise allows transfer of members of the force to the Marshall Islands or the Federated States of Micronesia.

DONE AT Honolulu, Hawaii, THIS 30th DAY

OF May, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA

DONE AT Honolulu, Hawaii, THIS 30th DAY

OF May, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE MARSHALL ISLANDS

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

Fred M. Zeder II

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT

OF

THE FEDERATED STATES OF MICRONESIA

Andon L. Amaraich

FEDERAL PROGRAMS AND SERVICES
AGREEMENT
Concluded Pursuant to
Article II of Title Two and Section 232 of
The Compact of Free Association

Federal Programs and Services Agreement Concluded Pursuant to Sections 221, 224, 225 and 232 of The Compact of Free Association

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Federal Programs and Services Agreement Concluded Pursuant to Article II of Title Two and Section 232 of The Compact of Free Association

This Agreement is concluded by the Signatory Governments and sets forth their respective authority and responsibility for the provision of the services and related programs authorized by Article II of Title Two and Section 232 of the Compact of Free Association (the Compact).

Article I

Definitions

1. The Definition of Terms set forth in Article VI of Title Four of the Compact is incorporated into this Agreement.

2. For the purposes of this Agreement only, the following terms shall have the following meanings:

(a) "Federal agency" refers to each authority of the Government of the United States which provides services and related programs in accordance with Article II of Title Two and Section 232 of the Compact, including any successor agency or agencies, and does not include:

(1) The Armed Forces of the United States as defined in Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact; or

(2) The Resident Representative officer and office established by the Government of the United States pursuant to Article V of Title One of the Compact.

(b) "United States contractors" means the legal entities, including corporations and natural persons, present in the Marshall Islands or the Federated States of Micronesia for the purpose of executing their contracts with the Government of the United States, or subcontracts of such contracts, in support of the Federal agencies acting pursuant to Article II of Title Two and Section 232 of the Compact and who are designated as such by the Government of the United States. The term "United States Contractors" does not include local contractors.

(c) "Local Contractors" means the legal entities, including corporations and natural persons organized under the laws of and who are in, the Marshall Islands or the Federated States of Micronesia, respectively.

(d) "United States personnel" means anyone who is included in any of the following categories:

(1) "civilian employees" -- all Federal agency personnel, notwithstanding their citizenship or nationality, except local hire personnel, who are in the Marshall Islands or the Federated States of Micronesia, and who are in the employ of or serving with a Federal agency and who are employed in any of the activities of such Federal agency.

(2) "contractor personnel" -- natural persons, who are United States citizens or nationals or United States permanent resident aliens, except local hire personnel, who are in the Marshall Islands or the Federated States of Micronesia, and who are United States contractors or officers or employees of United States contractors; or

(3) "dependents" -- the spouses and children of persons included in paragraphs 2(d)(1) or 2(d)(2) and, while members of the household of such persons, other relatives or wards of such persons or their spouses.

(e) "third country contractor personnel" means natural persons other than United States personnel or local hire personnel who are in the Marshall Islands or the Federated States of Micronesia and who are United States contractors or officers or employees of United States contractors or dependents of any of them.

(f) "local hire personnel" means citizens and nationals of the Marshall Islands or the Federated States of Micronesia who are employed in the Marshall Islands or the Federated States of Micronesia, respectively, by Federal agencies or United States contractors.

(g) "rawinsonde" means a method of upper-air observation consisting of an evaluation of the wind speed and direction, temperature, pressure, and relative humidity aloft by means of a balloon-borne radiosonde tracked by a radar or radio direction-finder. If radar is used for tracking, a radar target is also attached to the balloon. Thus, it is a radiosonde observation combined with a type of rawin observation.

Article II

Legal Status of Programs and Related Services, Federal Agencies, United States Contractors and United States Personnel

1. The provision by the Government of the United States of any programs and related services to the Government of the Marshall Islands or the Federated States of Micronesia, as may be appropriated by the United States Congress, pursuant to this Agreement shall be contingent upon compliance by the Government of the Marshall Islands or the Federated States of Micronesia with the provisions of Sections 173 and 225 of the Compact. The Government of the United States shall, on an annual basis, seek the appropriation of such funds.

2. (a) The Government of the United States, Federal agencies and United States contractors and their respective assets, income and other property shall be exempt from all direct taxes and shall be exempt from all customs duties on the import and export of articles required for the official functions and personal use of United States personnel and official offices established in the Marshall Islands or the Federated States of Micronesia by a Federal agency. The Government of the United States and Federal Agencies shall be exempt from all customs restrictions, inspection and examination on such import and export.

(b) Income received by United States personnel for services with or employment by the Federal agencies or United States contractors, or from sources outside the territory of the Government concerned, are exempt from any tax, fee or other charge imposed by the Government of the Marshall Islands or the Federated States of Micronesia, except that United States contractor personnel and dependents who are also United States contractor personnel are not exempt from a personal income tax generally applicable within the Marshall Islands or the Federated States of Micronesia up to a level of five percent of their annual income derived from their employment in the Marshall Islands or the Federated States of Micronesia, respectively, by United States contractors.

3. United States personnel may import into and export from the Marshall Islands or the Federated States of Micronesia furniture, household goods and personal effects for their private use, including all forms of privately owned land, sea and air transportation, free from customs duties, license requirements and other import and export taxes, fees or charges.

4. Animals and plants, including fruits and vegetables, imported by United States personnel, subject to the provisions of this Article, and by third country contractor personnel shall be subject to the laws and regulations of the Marshall Islands or the Federated States of Micronesia, respectively, governing the inspection of and restrictions on such importations.

5. The Federal agencies, in cooperation with the Government concerned, shall take appropriate measures, including inspection, to prevent importation of contraband and to prevent abuse of privileges granted to United States personnel under this Article.

6. Should property imported into the Marshall Islands or the Federated States of Micronesia under the exemptions provided by this Article subsequently be transferred to a person not entitled to such exemptions, such person shall be liable for import duties and other charges according to the laws and regulations of the Government concerned.

7. Civilian employees shall have the privileges and immunities of a resident representative as set forth in Sections 152(b) and (e) of the Compact, and immunity from civil and criminal process and liability relating to or resulting from any wrongful act or omission done within the scope and in the performance of official duty, except insofar as such immunity is expressly waived by the Government of the United States. Civilian employees who have been arrested in connection with an offense not related to the performance of their official duties, shall be released to the custody of the resident representative or the head of their agency in the Marshall Islands or the Federated States of Micronesia, unless in the case of a grave crime a competent judicial authority decides that such civilian employees shall remain subject to detention by the local authorities.

8. (a) The authorities of the Federal agencies shall pay just and reasonable compensation in settlement of meritorious, noncontractual claims arising out of the wrongful acts or omissions occuring subsequent to the effective date of this Agreement in the Marshall Islands or the Federated States of Micronesia of the Federal agencies themselves, or of their civilian and local hire personnel, if such act or omission occurred within the scope and in the performance of official duty of the civilian and local hire personnel. All such claims shall be processed and settled by the respective Federal agencies in accordance with the laws and regulations of the United States. Any such claims which cannot be settled as provided for in this paragraph, and which are espoused by the Government concerned, shall be disposed of pursuant to the provisions of Article II of Title Four of the Compact.

(b) Contractual claims against the Federal agencies shall be settled in accordance with the disputes clause of the contract if any, and the laws of the United States relating to the resolution of such disputes. In the absence of such clause, the claims shall be presented to the appropriate United States authority; if no settlement is reached, the appropriate court of the United States shall have jurisdiction over such claims.

(c) The Government concerned shall present claims arising under this Article to the United States Resident Representative who shall forward such claims to the Competent Authority of the Federal Agency concerned.

9. Except as otherwise expressly provided in this Agreement, any dispute arising under this Agreement shall be disposed of exclusively pursuant to the provisions of Article II of Title Four of the Compact.

(a) The Federal agencies shall not be subject to the jurisdiction of the courts of the Government of the Marshall Islands or the Federated States of Micronesia under Article VII of Title One of the Compact for any claim under paragraph 8 of this Article arising in the Marshall Islands or the Federated States of Micronesia from the acts or ommissions of the Federal Agencies occurring subsequent to the effective date of the Compact. All such claims shall be processed and settled exclusively in accordance with this Article.

(b) Any judgment presented for certification to the United States Court of Appeals for the Federal Circuit pursuant to Section 174 of the Compact of Free Association shall be deemed manifestly erroneous as to law if the claim upon which such judgment is based would have been barred by the statute of limitations if such claim had been brought in a court of the United States.

10. For the purposes of carrying out the provisions of this Agreement, Competent Authorities shall be designated by each of the Signatory Governments. The Competent Authorities of the Government of the United States and the Competent Authorities of the Marshall Islands and the Federated States of Micronesia may communicate directly with each other. In the case of the Government of the United States the Competent Authority shall be the head of or designee of the Federal agency concerned who shall be designated in writing to the Government concerned.

11. The Government of the Marshall Islands or the Federated States of Micronesia shall accept as valid, without a test or fee, the operator's permit or license or military driving permit issued to United States personnel or third country contractor personnel by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

12. Official vehicles of the Federal Agencies, vehicles owned or operated by United States contractors, and privately owned vehicles of United States personnel shall be identified by individual markings or license plates issued by the Government of the United States, the Governments of the States of the United States of America, its Territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands. However, the Government of the United States may use local individual markings or license plates in Palau and the Federated States of Micronesia.

(a) Official vehicles shall not be subject to the registration or safety inspection laws of the Government of the Marshall Islands or the Federated States of Micronesia.

(b) The Armed Forces of the United States may register vehicles of United States contractors and United States personnel which are not official vehicles, and may inspect such vehicles applying safety standards of general applicability in the Marshall Islands or the Federated States of Micronesia, respectively. Vehicles so registered and inspected shall be exempt from the registration and safety inspection laws of the Government of the Marshall Islands or the Federated States of Micronesia, respectively.

13. For purposes of this Article the term "vehicles" includes all forms of land, sea and air transportation.

14. Any reference in this Agreement to a provision of the law of the United States constitutes the incorporation of the language of such provision into this Agreement as such provision is in force on the effective date of this Agreement or as it may be amended thereafter on a non-discriminatory basis according to the constitutional process of the United States.

15. The Government of the United States may use local telecommunication systems and, in determining its uses of such systems, shall take into consideration the cost and security of such systems and the availability of alternate United States systems. The Government of the United States shall encourage the use of local telecommunication systems by United States personnel for non-official purposes. To the extent that the Government of the Marshall Islands or the Federated States of Micronesia establishes telecommunications systems compatible with existing United States Government installations, the Government of the United States and the Government concerned may enter into negotiations for a use arrangement which includes normal billing procedures.

Article III

Employment of Labor

1. In providing services and related programs in the Marshall Islands or the Federated States of Micronesia pursuant to Section 221 of the Compact, the Federal agencies, United States contractors and local contractors:

(a) may employ persons possessing requisite skills and qualifications. Employment preference shall be given, without discrimination, to citizens, nationals and permanent resident aliens of the Marshall Islands or the Federated States of Micronesia, in their respective jurisdictions, and of the United States. In the employment of such persons pursuant to the preferences set forth in this paragraph, the Federal Agencies and the United States contractors shall exercise their best efforts to employ persons present in the Marshall Islands or the Federated States of Micronesia, respectively.

(b) shall utilize without discrimination, consistent with the laws and regulations of the United States, qualified local contractors and contractors which are legal entities of the United States. The Federal Agencies and United States contractors shall ensure that the specifications and instructions for contract bids shall permit such free and full competition as is consistent with the procurement of the goods and services needed by the Government of the United States.

2. Prior to the employment of third country personnel or the utilization of third country contractors, the Government of the United States shall notify the Government concerned and shall consult, if requested, with that Government as to the availability of qualified local hire personnel or qualified local contractors.

3. The laws and regulations of the Marshall Islands or the Federated States of Micronesia shall not apply to the terms and conditions of employment of United States personnel by Federal agencies, or United States contractors. The Government of the Marshall Islands or the Federated States of Micronesia shall not require United States personnel, third country contractor personnel or United States contractors to obtain any license, permit or certificate, or to undergo any examination, in connection with the performance of their duties on behalf of Federal agencies.

4. In the employment of local hire personnel by the Federal agencies and United States contractors, the Government of the United States shall adopt measures consistent with the standards of local labor laws to the extent they are compatible with laws, regulations and operational requirements of the United States.

Article IV

Entry and Departure

1. The Government of the United States may bring into the Marshall Islands and the Federated States of Micronesia:

(a) United States personnel and United States contractors; and

(b) Third country contractor personnel in a manner consistent with those laws of the Marshall Islands or the Federated States of Micronesia, respectively, relating to the exclusion of individual, undesirable aliens and taking into account paragraph 5 of this Article and Article III of this Agreement.

2. United States personnel shall be exempt from the passport and visa laws and regulations of the Marshall Islands and the Federated States of Micronesia. Taking into account paragraph 1(b) of this Article and Article III of this Agreement applications of third country contractor personnel for visas shall be granted or denied expeditiously. All such personnel shall comply with medical immunization requirements of the Marshall Islands and the Federated States of Micronesia, respectively.

(a) No United States personnel or third country contractor personnel shall acquire any right to permanent residence or domicile solely as a result of their being United States personnel or third country contractor personnel.

(b) United States personnel shall be exempt from laws and regulations of the Marshall Islands and the Federated States of Micronesia on the entry, departure, registration and control of aliens and foreign agents.

3. Upon entry into or departure from the Marshall Islands or the Federated States of Micronesia, United States personnel shall have in their possession official orders or documents certifying the status of the individual or group. Such orders or documents shall be shown on request to the appropriate authorities of the Government concerned.

4. For the purpose of their identification while in the Marshall Islands or the Federated States of Micronesia, United States personnel ten years of age or older shall have in their possession a personal identification card authorized by the Government of the United States which shall show the name, date of birth, status, and photograph of the bearer. Such card shall be shown on request to the appropriate authorities of the Government concerned.

5. If the Government of the Marshall Islands or the Federated States of Micronesia requests the removal from the Marshall Islands or the Federated States of Micronesia, respectively, of any United States personnel or any third country contractor personnel, the request shall be directed to the United States resident

representative, who shall consult with the Government concerned on the appropriate action to be taken regarding removal. If the Government of the United States and the other Signatory Government concerned so determine, the person whose removal has been requested shall immediately become subject to the jurisdiction of the other Signatory Government concerned in accordance with its laws.

6. Transportation costs attendant to the departure and removal of third country contractor personnel shall be the responsibility of the Government of the United States.

Article V

Implementation of Section 225 of the Compact and Title to Property

1. Specific arrangements for the establishment and use by the Government of the United States of facilities or areas for Federal agencies in the Marshall Islands or the Federated States of Micronesia shall be set forth in Exchanges of Notes, which, when signed, shall be annexed to this Agreement as Annex A.

2. If, in the exercise of its authority and responsibility under Section 221 of the Compact, the Government of the United States requires the use of facilities or areas in the Marshall Islands or the Federated States of Micronesia in addition to or in place of those for which specific arrangements are concluded pursuant to the exchanges of notes included in Annex A of this Agreement, it may request the Government concerned to satisfy those requirements through leases or other arrangements. That Government shall sympathetically consider any such request and shall establish suitable procedures and provide a prompt response to the Government of the United States.

3. If the Government of the Marshall Islands or the Federated States of Micronesia requires for some other purpose the use of facilities or areas which have been provided the Government of the United States pursuant to this Agreement, the Government concerned shall request the Government of the United States to accept equivalent facilities or areas. The Government of the United States shall sympathetically consider any such request and provide a prompt response. Any pertinent agreement shall be effected in accordance with paragraph 2 of Article XIII of this Agreement by an amendment to the Exchanges of Notes included in Annex A of this Agreement.

4. All property for which the Government of the United States determines that it has a continuing requirement in order to carry out its authority and responsibility pursuant to Section 221 of the Compact, title to which therefore remains vested in the Government of the United States pursuant to Section 234 of the Compact, is set forth in the separate agreement in implementation of Section 234 of the Compact.

5. Title to improvements to real property or to any item of equipment or other personal property hereinafter furnished, acquired, supplied, constructed or purchased by or with funds provided by the Government of the United States in connection with the programs and related services set forth in this Agreement is vested in the Government of the United States, except where expressly sold or otherwise conveyed.

6. Upon relinquishing facilities or areas designated for Federal agency use, or a portion thereof, whether at the termination of a specific service and its related programs or at an earlier date,

the Government of the United States shall not be obligated to restore any such site or portion thereof to its former condition, or to make compensation in lieu of such restoration. The Signatory Governments may otherwise agree, based on considerations including the existence of conditions substantially or materially hazardous to human life, health and safety.

7. The Government of the United States has the right to remove any installations or improvements which it has constructed on an area designated for Federal agency use. If any installations or improvements which were constructed at the expense of the Government of the United States are to be left behind after relinquishing facilities or areas designated for Federal agency use, or a portion thereof, the Government of the Marshall Islands or the Federated States of Micronesia and the Government of the United States shall consult to determine the residual value, including scrap value, if any, of any such installations or improvements to the Government concerned and to agree upon an appropriate method of compensating the Government of the United States for such residual value.

8. Except as may be otherwise expressly agreed, the Government of the United States, Federal agencies and United States contractors shall retain title to equipment, materials and other movable property brought into or acquired by them in the Marshall Islands or the Federated States of Micronesia and may remove such property at any time from the Marshall Islands or the Federated States of Micronesia, or dispose of it therein.

Article VI

Postal Services and Related Programs

1. The Government of the Marshall Islands or the Federated States of Micronesia shall assume responsibility pursuant to its laws and regulations for all local postal services.

2. The Government of the Marshall Islands or the Federated States of Micronesia shall be responsible for all its postal staff, facilities and equipment.

3. From the effective date of this Agreement until its first anniversary, salaries for United States Postal Service (USPS) employee positions in the Marshall Islands and the Federated States of Micronesia shall be paid by the USPS, without reimbursement by the Government of the Marshall Islands or the Federated States of Micronesia, to the extent that employee costs remain at the level the USPS would have expended to maintain the level of service available in the Marshall Islands and the Federated States of Micronesia in the year prior to the effective date of this Agreement.

4. Prior to the first anniversary of the effective date of this Agreement, any postal employee serving in the Marshall Islands and the Federated States of Micronesia who was a USPS employee on the effective date of this Agreement shall have the right to transfer to a position of comparable pay level at a facility outside the Marshall Islands and the Federated States of Micronesia, as follows:

(a) the employee may choose to transfer to a facility designated by the USPS with reimbursement of moving expenses as provided in the USPS Methods Handbook M-9, "Travel"; or

(b) the employee may choose to transfer to an available position designated by the USPS in a location chosen by the employee at the employee's own expense.

5. Six months prior to the first anniversary of the effective date of this Agreement, the Governments of the Marshall Islands and the Federated States of Micronesia shall offer comparable positions, as determined by each such Government, to all employees referred to in paragraph 4 of this Article serving in post offices located in the Marshall Islands or the Federated States of Micronesia, respectively, who do not elect to transfer to another location pursuant to paragraph 4 of this Article. Such employees shall notify the Government concerned, within thirty days after such offer, whether they intend to accept such position. Such offer and the employee's election in response thereto shall not alter the employee's status under paragraph 3 of this Article prior to the first anniversary of the effective date of this Agreement.

6. On the effective date of this Agreement the USPS shall, without compensation, turn over to the Government of the Marshall Islands or the Federated States of Micronesia all USPS facilities and equipment, in good repair and workable condition, in use in the Marshall Islands or the Federated States of Micronesia, respectively, as of that date.

7. The Governments of the Marshall Islands and the Federated States of Micronesia shall issue postage stamps and other prescribed postal indicia which shall be used for prepayment of postage rates and other postal charges on all mail originating in its territory, except for mail sent through the military postal system provided for in Article VII of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association.

8. The USPS shall provide the following services for the Marshall Islands and the Federated States of Micronesia for a period of fifteen years commencing on the effective date of this Agreement without compensation by the Government of the Marsnall Islands or the Federated States of Micronesia; provided that the provision of such services shall be based upon reimbursement of the USPS from funds appropriated by the United States Congress in implementation of this Agreement:

(a) conveyance of mail, at levels of service, including classes and special services, equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Agreement, to and from the designated exchange offices in the Marshall Islands and the Federated States of Micronesia; and

(b) dispatch, documentation, statistical, accounting, and settlement operations in connection with the international exchange of such mail.

9. The Governments of the Marshall Islands and the Federated States of Micronesia shall undertake to protect the postal services provided by the Government of the United States from exploitation for the monetary gain of private or government organizations or of individuals or of commercial enterprises, including the posting of bulk mail, books, catalogues, goods or materials. The Government of the United States shall provide mail service pursuant to this Agreement with the understanding that the volume of mail may increase in proportion to population increases and ordinary growth of local commercial enterprise. Should an increase in the volume of mail of twenty percent or more within a twelve-month period be anticipated or experienced by the Government of the Marshall Islands or the Federated States of Micronesia, the Government concerned shall enter into a separate agreement with the Government of the United States which shall establish the amount of reimbursement to be paid to the Government of the United States for the volume in excess of twenty percent.

10. The Governments of the Marshall Islands and the Federated States of Micronesia shall ensure that all mail turned over to the USPS for conveyance to the United States or other countries complies with the postal conventions to which the United States adheres and with the postal laws and regulations of the United States.

11. Pursuant to this Agreement, mail shall be exchanged at the exchange offices designated in this paragraph and outgoing mail from the Marshall Islands and the Federated States of Micronesia shall be merged with United States mail for conveyance to the United States or to other countries. Such outgoing mail from the Marshall Islands and the Federated States of Micronesia shall be treated as though it were mail from the United States for dispatch, documentation, statistical, accounting and settlement operations with other countries. The six designated exchange offices shall be located in the Marshall Islands, at Majuro and Ebeye, and the Federated States of Micronesia, at Kosrae, Ponape, Truk and Yap.

12. Until the effective date of the Compact, United States domestic postal rates shall apply to mail exchanged between addresses in the Marshall Islands and the Federated States of Micronesia and between those addresses and addresses in the United States. After the effective date of the Compact, the USPS may establish cost-related rates for mail from the United States to the Marshall Islands or the Federated States of Micronesia. Such United States-established rates shall establish the ceiling and United States domestic rates shall establish the floor for postage rates for mail from the Marshall Islands or the Federated States of Micronesia to the United States and to the Marshall Islands and the Federated States of Micronesia. International postal rates applicable in the United States shall apply to mail from the Marshall Islands and the Federated States of Micronesia addressed to other countries.

13. The Government of the Marshall Islands or the Federated States of Micronesia may determine postal rates for internal mail to local addresses within the Marshall Islands or the Federated States of Micronesia, respectively.

14. Revenues derived from the sale of stamps issued by the Government of the Marshall Islands or the Federated States of Micronesia for postal services or for philatelic purposes shall be retained by the Governments which issued such stamps. The Governments of the Marshall Islands and the Federated States of Micronesia agree to provide, pursuant to their constitutional processes, adequate funding for the operation of their postal services in a manner which will allow the USPS to perform its responsibilities under this Agreement in an efficient and economical manner, with any disputes arising under this paragraph to be resolved pursuant to Article II of Title Four of the Compact.

15. Liability for the loss of a registered or insured item shall rest with the Government which, having received it without comment, cannot prove either delivery to the addressee or correct transfer to another administration. Pursuant to paragraph 19 of this Article, the Government of the United States shall, upon request, assist the Government of the Marshall Islands or the Federated States of Micronesia in developing local practices and procedures to fulfill the requirements of this paragraph.

16. The Governments of the Marshall Islands and the Federated States of Micronesia shall not impose any terminal dues or other charges on the USPS or the postal administrations of any other government for mail conveyed to the Marshall Islands or the Federated States of Micronesia by the USPS pursuant to this Agreement.

17. Postal Money Orders shall be issued in the Marshall Islands and the Federated States of Micronesia on USPS forms and in accordance with USPS regulations. All amounts collected in connection with such issuance, including the Postal Money Order fees, shall be remitted to the USPS. Postal Money Orders paid in the Marshall Islands and the Federated States of Micronesia shall be deposited for the credit of each such Government in accordance with prescribed procedures. Such Postal Money Orders shall follow the normal bank clearance process for final payment by the USPS. The USPS shall be responsible for providing all necessary forms and for reconciling the Postal Money Order accounts. The Government of the Marshall Islands or the Federated States of Micronesia may terminate the category of service set forth in this paragraph in the same manner as this Article may be terminated in accordance with Article XII of this Agreement.

18. The USPS and the Governments of the Marshall Islands and the Federated States of Micronesia shall issue stamps to commemorate the inauguration of the new political status of free association between the United States and the Marshall Islands and the Federated States of Micronesia. Each Government shall retain all revenues from the sale of the stamps it issues.

19. Pursuant to this Agreement the USPS shall provide, without compensation, such technical assistance, including technical assistance to provide for the orderly transfer of postal responsibilities, and employee training as the USPS and appropriate officials authorized to act on behalf of the Governments of the Marshall Islands and the Federated States of Micronesia mutually agree to be necessary and appropriate. The USPS shall provide expedited training at no cost to the Marshall Islands or the Federated States of Micronesia for the replacement of employees who transfer pursuant to paragraph 4 of this Article so that the Governments of the Marshall Islands and the Federated States of Micronesia can continue to execute properly their postal responsibilities pursuant to this Agreement. In addition, appropriate officials of the Governments of the Marshall Islands and the Federated States of Micronesia shall consult with the USPS with regard to fiscal planning and postal administration for the purpose of promoting

economical and efficient postal services and programs.

20. The obligations of the Governments signatory to this Agreement under this Article shall terminate fifteen years after the effective date of this Agreement. Prior to termination of this Agreement, the USPS and the Governments of the Marshall Islands and the Federated States of Micronesia shall enter into bilateral arrangements to establish mutually acceptable terms and conditions for the exchange of mail between the United States and the Marshall Islands and the Federated States of Micronesia.

21. As mutually agreed, the United States shall assist the Governments of the Marshall Islands and the Federated States of Micronesia in acquiring membership in relevant international or regional postal organizations.

22. If, prior to the effective date of this Agreement, the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia have entered into a separate agreement for interim implementation of the postal services and programs provided for in this Agreement, the obligations of the Signatory Governments provided for in paragraphs 3, 4, 5, 6 and 19 of this Article shall be considered fully executed or shall be diminished to the extent such obligations have been discharged under such interim agreement prior to the effective date of this Agreement.

Article VII

Weather Services and Related Programs

1. The National Weather Service of the United States, in cooperation with the United States Navy, shall provide weather services and related programs in the Marshall Islands and the Federated States of Micronesia at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of the Compact.

2. These services and related programs shall be provided pursuant to:

(a) the provisions of 15 U.S.C. 311-329; the International Aviation Facilities Act 49 U.S.C. 1151 et seq.; and section 803 of the Federal Aviation Act of 1958 49 U.S.C. 1463;

(b) other provisions of the laws of the United States to the extent they expressly apply to the National Weather Service;

(c) weather treaties and other international weather agreements to which the United States is a party;

(d) applicable Executive Orders of the President of the United States; and

(e) implementing National Weather Service regulations.

3. The Government of the Marshall Islands or the Federated States of Micronesia may issue weather forecasts under such terms as may be mutually agreed with the National Weather Service. The Government of the United States shall continue to provide public and aviation weather forecasts and severe weather warnings.

4. The Government of the Marshall Islands or the Federated States of Micronesia may take such transitional actions as may be necessary to prepare for the establishment and support of its own weather service. Such transitional actions may be initiated at any time prior to termination of the Compact pursuant to Article IV of Title Four of the Compact or prior to termination of this Article pursuant to Article XII of this Agreement. The National Weather Service shall provide advice in the development of the weather service of the Marshall Islands or the Federated States of Micronesia at the request of the Government concerned.

5. The National Weather Service shall provide weather services and related programs pursuant to this Article, in part, through weather service offices established in the Marshall Islands or the Federated States of Micronesia.

(a) As of the effective date of this Agreement all employees at Weather Service offices in the Marshall Islands or the Federated States of Micronesia shall be employed in like positions by the Government of the Marshall Islands or the Federated States of Micronesia, respectively.

(b) The National Weather Service and the Government of the Marshall Islands or the Federated States of Micronesia shall in an Exchange of Notes set forth the duties and qualifications of employees and provide procedures to reimburse the Government concerned for materials and for salaries and other expenses incurred in the performance of these duties; and

(c) The Government of the United States shall reimburse the Government concerned for costs incurred under this paragraph.

6. As required to implement the services and related programs provided pursuant to this Article or to meet technological change, the National Weather Service shall train employees of the Government of the Marshall Islands or the Federated States of Micronesia assigned to weather stations. The Government of the United States shall reimburse the Government concerned for costs incurred for training approved by the National Weather Service.

7. The National Weather Service shall inspect weather stations to assure the quality of meteorological operations.

8. The National Weather Service shall provide and maintain Weather Service offices pursuant to Article V of this Agreement, including meteorological observatories and other buildings, and shall maintain and replace meteorological and other equipment of the National Weather Service.

9. The National Weather Service shall provide the supplies required for the operation of its programs and related services.

10. Pursuant to Article III, Title One of the Compact, the radio operating frequencies in the bands 401-406 MHz and 1660-1700 MHz shall be protected by the Government of the Marshall Islands or the Federated States of Micronesia in order to ensure their interference-free use for rawinsonde observations, in accordance with the provisions of Radio Regulations annexed to the International Telecommunication Convention (ISBN 92-61-0081-5). Other radio operating frequencies may be substituted for those set forth in this paragraph by agreement of the Governments concerned.

11. The Governments of the Marshall Islands, and the Federated States of Micronesia, in order to assure that they receive the most current meteorological information and that such information from them will be available on a global basis, shall provide continuing access to its telecommunications services, for meteorological traffic to and from Guam, or other points as may be designated by the Government of the United States.

12. The National Weather Service and the Federal Aviation Administration shall provide weather services and related programs in Kosrae, Federated States of Micronesia, to the extent that such services and related programs are determined by the Federal Aviation Administration to meet requirements for safe and efficient operation of United States air carriers engaged in domestic air service in Kosrae. The National Weather Service shall train employees of the Government of the Federated States of Micronesia assigned to Kosrae to enable such employees to provide weather reporting services required by the Federal Aviation Administration pursuant to this paragraph. The National Weather Service shall not be responsible for providing reimbursement to the Federated States of Micronesia for personnel costs, including salaries and expenses, incident to the provision of weather services in Kosrae pursuant to this paragraph.

Article VIII

Civil Aviation Safety Services and Related Programs

1. The Government of the United States and the Governments of the Marshall Islands, and the Federated States of Micronesia agree that the Federal Aviation Administration (FAA) shall provide aviation safety services in the Marshall Islands, and the Federated States of Micronesia in accordance with this Article with the common desire to:

(a) promote the common interests of the Government of the United States and the Governments of the Marshall Islands, and the Federated States of Micronesia in fostering safe and efficient air service; and

(b) facilitate the orderly establishment of aviation safety statutory and regulatory regimes and aviation safety authorities by the Governments of the Marshall Islands and the Federated States of Micronesia.

2. On behalf of the Governments of the Marshall Islands and the Federated States of Micronesia, the Government of the United States shall provide aviation safety services in the Marshall Islands, and the Federated States of Micronesia at levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Agreement as follows:

(a) en route air traffic services within that air space including the Marshall Islands and the Federated States of Micronesia for which the Government of the United States has responsibility under the appropriate regional air navigation plan approved by the International Civil Aviation Organization (ICAO);

(b) flight inspection and ground certification of nondirectional beacons and distance-measuring equipment, and periodic review and evaluation of the need for, and the maintenance, modification, improvement or replacement of, nondirectional beacons, distance-measuring equipment and related support systems in the Marshall Islands, or the Federated States of Micronesia; and

(c) development and updating of instrument approach procedures, standard instrument departure procedures and standard terminal arrival routes for airports in the Marshall Islands, or the Federated States of Micronesia, and issuance of appropriate Notices to Airmen.

3. Each of the Governments of the Marshall Islands and the Federated States of Micronesia, pursuant to Section 471(b) of the Compact, shall take all necessary steps to ensure the conformity of its laws, regulations and administrative procedures with the provisions of this Article. The aviation safety services specified under

paragraph 2 of this Article shall be provided exclusively pursuant to treaties and other international agreements relating to aviation safety to which the United States is a party and the laws and regulations of the United States. The Governments of the Marshall Islands and the Federated States of Micronesia:

(a) consistent with Resolution A23-11, Appendix N, Part II, Air Navigation of ICAO Assembly Resolutions in force as of October 7, 1980, U.N. Doc. 9349, assign and delegate to the Government of the United States sole authority and responsibility for providing aviation safety services as specified in paragraph 2(a) of this Article until such time as those responsibilities are transferred at the request of the Government of the Marshall Islands or the Federated States of Micronesia, and with the approval of the ICAO, from the Government of the United States to the Governments of the Marshall Islands and the Federated States of Micronesia; and

(b) grant unobstructed access by FAA personnel and FAA equipment to the property on which the navigational and landing aids set forth in paragraph 2(b) of this Article are located.

4. The FAA shall provide technical assistance to the Government of the Marshall Islands or the Federated States of Micronesia to develop civil aviation safety authorities and to assist the government concerned in the administration of safety certification and related aviation safety programs. Such technical assistance shall be provided pursuant to implementing agreements to be negotiated from time to time between the Government of the United States and the Government concerned. The FAA shall provide such technical assistance in accordance with the provisions of the Federal Aviation Act of 1958, 49 U.S.C. 1301 et seq. and the International Aviation Facilities Act, 49 U.S.C. 1151 et seq. The technical assistance provided by the FAA includes:

(a) continuing development of aviation safety statutes, regulations and aviation safety authorities;

(b) training, in the United States, of personnel designated by the Government of the Marshall Islands or the Federated States of Micronesia, respectively; and

(c) the stationing of FAA personnel in the Marshall Islands or the Federated States of Micronesia to provide continuing advice and guidance to aviation safety authorities at the request of the Government concerned. Such advice and guidance may include assistance required for certification by the Government of the Marshall Islands or the Federated States of Micronesia of airmen, aircraft, airports and air agencies, as the term "air agencies" is used in 49 U.S.C. 1427.

5. Pursuant to Article II, Title One, of the Compact, the Governments of the Marshall Islands, and the Federated States of Micronesia shall protect radio frequency bands allocated in accordance with Article 5 of the Radio Regulations of the International

Telecommunications Union to the aeronautical mobile, mobile, aeronautical fixed, fixed, aeronautical radionavigation, and radionavigation services in accordance with the provisions of Radio Regulations annexed to the International Telecommunication Convention, in order to ensure their use free of interference for these allocated purposes in support of civil aviation.

6. The Governments of the Marshall Islands and the Federated States of Micronesia, in order to ensure that they transmit and receive the most current meteorological information for civil aviation purposes and that such information provided by them shall be available on a global basis, shall provide continuing access to their telecommunications services for meteorological traffic to and from Guam or other points as may be designated by the Government of the United States in consultation with the Government of the Marshall Islands, or the Federated States of Micronesia.

7. The Governments of the Marshall Islands and the Federated States of Micronesia, in order to ensure that they transmit and receive the most current flight movement and airmen information data for civil aviation purposes, and that such information received or provided by them will be available on a global basis, shall provide continuing access to their telecommunications services for flight movement and airmen information traffic to and from Guam or other entry points into the Aeronautical Fixed Service of the International Civil Aviation Organization as may be designated in accordance with the Convention on International Civil Aviation, Annex 10, Volumes 1 and 2, by the Government of the United States in consultation with the Government of the Marshall Islands, or the Federated States of Micronesia.

8. The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia shall from time to time enter into such agreements as may be necessary to implement subparagraphs (b) and (c) of paragraph 2 of this Article.

Article IX

Civil Aviation
Economic Services and Related Programs

1. The Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia agree that the following provisions shall apply to the economic regulation of air services of the Marshall Islands and the Federated States of Micronesia.

2. The Governments of the Marshall Islands and the Federated States of Micronesia shall exercise independent economic regulatory jurisdiction over air services to, from and within the Marshall Islands and the Federated States of Micronesia, respectively, which for the purposes of this Agreement are points outside the United States, as the term "United States" is defined in 49 U.S.C. 1301(41).

3. In accordance with Section 124 of the Compact, the Government of the United States, if requested and as mutually agreed, shall negotiate or assist in negotiations for air rights with third countries on behalf of the Government of the Marshall Islands or the Federated States of Micronesia.

4. The Civil Aeronautics Board, upon request, shall provide the following assistance to the Governments of the Marshall Islands and the Federated States of Micronesia:

(a) preparation of statutory and regulatory proposals for the economic regulation of civil aviation;

(b) processing, in Washington, D.C., on behalf of and on the basis of procedures mutually agreed with the Government of the Marshall Islands or the Federated States of Micronesia of applications from any person seeking authority from those governments to engage in air services to, from or within the Marshall Islands or the Federated States of Micronesia, respectively; the power of ultimate disposition of such applications rests with the Government of the Marshall Islands or the Federated States of Micronesia, respectively;

(c) training in the processing of air service applications, in Washington, D.C., of not more than two persons per government annually, and a total of not more than six persons, per government during the life of this Agreement. The designating Government shall be responsible for travel, subsistence and similar expenses of its designated persons while in such training; and

(d) such other assistance as may from time to time be specifically agreed to by the Civil Aeronautics Board.

5. Subject to approval of the Congress of the United States, the Government of the United States shall establish:

(a) Until October 24, 1988 and thereafter if extended by the laws of the United States, eligibility of United States air carriers for subsidy compensation necessary to support essential air transportation, at a level determined by the Civil Aeronautics Board, between the United States and points in the Marshall Islands and the Federated States of Micronesia receiving regularly scheduled air service by Continental Air Micronesia on August 26, 1982, and between such points in the Marshall Islands and the Federated States of Micronesia. In determining the level of essential air transportation, the Civil Aeronautics Board shall take account of all air service, including connecting service, provided to the Marshall Islands and the Federated States of Micronesia, including service by United States, Freely Associated State and all other carriers.

(b) A distinct classification of foreign air carrier, as the term "foreign air carrier" is defined in 49 U.S.C. 1301(22), to be known as "Freely Associated State Air Carrier." This classification shall apply exclusively to a carrier which:

(1) is organized under the laws of the Marshall Islands, the Federated States of Micronesia or the United States; and

(2) has consent to such classification from the Government of the Marshall Islands or the Federated States of Micronesia, concerned, and consent to such classification from the Government of the United States pursuant to standards adopted by the Government of the United States for such classification.

(c) Authority for the Civil Aeronautics Board to authorize Freely Associated States Air Carriers to carry local traffic between Guam, the Commonwealth of the Northern Mariana Islands, and Honolulu, and within the Commonwealth of the Northern Mariana Islands.

(d) Eligibility of Freely Associated State Air Carriers to receive subsidy compensation at a level determined by the Board in accordance with paragraph 5(a) of this Article either if no United States air carrier is available to provide the essential air transportation or if the subsidy required for the provision of essential air transportation by a Freely Associated State Air Carrier would be substantially less than the subsidy which would be paid to an available United States air carrier, provided that unilateral action by the Government of the Marshall Islands or the Federated States of Micronesia under subparagraph 5(b)(2) of this Article shall impose no obligation on the Government of the United States to increase the level of such compensation.

(e) Authority for the Civil Aeronautics Board to require that any United States, Freely Associated State or other carrier which provides service in a subsidized market comply with specified service, rate or fare conditions as may be necessary or desirable to minimize subsidy without undue impairment of the service provided.

(f) Notwithstanding the provisions of 49 U.S.C. 1301(16), Air Micronesia, Inc. shall qualify as a U.S. citizen air carrier, within the meaning of 49 U.S.C. 1301(3), for so long as it continues to be (1) incorporated in the United States or its Territories or possessions, and (2) controlled by citizens of the United States or by a corporation or corporations controlled by citizens of the United States.

(g) Compensation determined by the Civil Aeronautics Board to be necessary to maintain essential air transportation shall be provided from funds specifically appropriated for compensation for service under paragraph 5(a) of this Article.

(h) The Civil Aeronautics Board shall adopt rules to implement the provisions of this paragraph as the Board in its discretion, deems appropriate.

6. Notwithstanding paragraph 2, the Governments of the Marshall Islands and the Federated States of Micronesia shall authorize, without restrictions or impairment, United States air carriers to operate air services to, through, beyond, within and between the Marshall Islands and the Federated States of Micronesia and to establish tariffs applicable to such air services. The Government of the United States shall promptly notify the Government of the Marshall Islands or the Federated States of Micronesia, concerned, of the filing with the Civil Aeronautics Board of any application by a United States air carrier for authority under the laws of the United States to operate air services pursuant to this paragraph. The Governments of the Marshall Islands and the Federated States of Micronesia shall designate competent authorities pursuant to Article II, paragraph 10, of this Agreement for the purpose of receiving such notice. The Government concerned shall be accorded an opportunity to present its views which shall be considered in reaching any decision. Should a formal or informal proceeding be instituted by the Government of the United States in connection with any such application, the Government concerned shall be made a party to such proceeding with full rights in accordance with the applicable procedural rules.

7. The Government of the United States shall sympathetically consider requests by the Government of the Marshall Islands or the Federated States of Micronesia for negotiations of a bilateral air transport agreements between the Government of the United States and the requesting government. The Governments of the Marshall Islands, the Federated States of Micronesia and the United States shall, on the basis of reciprocity, exempt air carriers which are authorized by any other government signatory to this Article to provide air services, from customs duties and taxes imposed by their national authorities, and shall not impose user charges which exceed an equitable proportion of the reasonable costs of providing the facilities, or which are discriminatory.

8. The Government of the Marshall Islands or the Federated States of Micronesia may terminate the operation of any of four categories of economic services described in the subparagraphs of this Article and set forth below. Such partial termination, which may be effected in the same manner as this Article may be terminated in accordance with Article XII of this Agreement, may be exercised only for the categories listed below.

(a) Category 1 -- paragraph 4;

(b) Category 2 -- subparagraphs (a), (d) and (e) of paragraph 5;

(c) Category 3 -- subparagraph (c) of paragraph 5; or

(d) Category 4 -- subparagraphs (a), (b), (c), (d) and (e) of paragraph 5.

If the Government of the Marshall Islands or the Federated States of Micronesia terminates the operation of the subparagraphs in Category 4, that Government may, in accordance with Article XII of this Agreement, also terminate the operation of paragraph 6 of this Article.

If the Government of the Marshall Islands or the Federated States of Micronesia elects to terminate both the operation of the subparagraphs in Category 4 and the operation of paragraph 6 of this Article, the remaining provisions of this Article shall cease to be in effect two years after such termination, unless otherwise agreed by the Government of the Marshall Islands or the Federated States of Micronesia, concerned, and the Government of the United States.

Article X

Federal Emergency Management Agency Services and Related Programs

1. The Federal Emergency Management Agency of the United States (FEMA) shall make available disaster assistance in the Marshall Islands or the Federated States of Micronesia at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of the Compact.

2. These disaster assistance services and related programs shall be provided pursuant to:

(a) The provisions of the Disaster Relief Act of 1974, 42 U.S.C. 5121, et seq.;

(b) Applicable Executive Orders of the President of the United States; and

(c) Implementing FEMA regulations.

3. Assistance under the Disaster Relief Act of 1974 shall be made available to the Marshall Islands or the Federated States of Micronesia in the same manner as assistance is made available to a "State". Solely for the purpose of applying the Disaster Relief Act of 1974 pursuant to this Article, the Marshall Islands or the Federated States of Micronesia shall be considered included within the definitions of "United States" and "State" as those terms are defined in 42 U.S.C. 5122.

4. The President of the President of the Marshall Islands or the President of the Federated States of Micronesia may request a determination by the President of the United States that an emergency or a major disaster exists in the Marshall Islands or the Federated States of Micronesia, respectively, in accordance with 42 U.S.C. 5141.

(a) In order to expedite such determination, the request shall simultaneously be forwarded to the Regional Director of FEMA in whose region the Marshall Islands or the Federated States of Micronesia are included for the purposes of this Article. The request shall conform with the provisions of the FEMA Disaster Assistance Regulations, 44 C.F.R. 205.

(b) Upon the declaration of an emergency or a major disaster by the President of the United States pursuant to this Section, an Exchange of Notes for each such emergency or major disaster shall be executed by the President of the Government of the Marshall Islands or the Federated States of Micronesia on behalf of such Government and the designated FEMA official on behalf of the Government of the United States. The Exchange of Notes shall set forth the type, extent, terms and conditions of disaster assistance to be provided by the Government of the United States. The Exchange of Notes shall be executed in lieu of the Federal - State Agreement for an emergency or major disaster as required by 44 C.F.R. 205.

5. The President of the Marshall Islands or the President of the Federated States of Micronesia may request a determination by FEMA that fire suppression assistance be provided to the Marshall Islands or the Federated States of Micronesia, respectively, pursuant to 42 U.S.C. 5187.

(a) The request shall conform with Subpart G of the FEMA Disaster Assistance Regulations, 44 C.F.R. 205.

(b) Upon a determination that fire suppression assistance shall be provided, an Exchange of Notes shall be executed by the President of the Government of the Marshall Islands or the Federated States of Micronesia on behalf of such Government and the designated FEMA official on behalf of the Government of the United States. The Exchange of Notes shall set forth the type, extent, terms and conditions of fire suppression assistance to be provided by FEMA. The Exchange of Notes shall be executed in lieu of the Federal - State Agreement for Fire Suppression required by Subpart G of the FEMA Disaster Assistance Regulations.

6. The Government of the Marshall Islands or the Federated States of Micronesia may request an annual grant pursuant to 42 U.S.C. 5131(d). The requesting Government shall use such grants for improving, maintaining and updating the applicable portion of the disaster assistance plan developed by the Trust Territory of the Pacific Islands pursuant to 42 U.S.C. 5131(c) or any other disaster assistance plan of the requesting Government.

7. The Government of the Marshall Islands or the Federated States of Micronesia assumes all rights, obligations and liabilities arising out of services and related programs provided after the effective date of the Compact, including matching fund obligations which may be required by law or for which a commitment has been made by agreement between FEMA and the Government concerned. The Government of the Marshall Islands or the Federated States of Micronesia shall assume administrative responsibilities for procedures required to close out disaster relief efforts begun in connection with any disaster which is "open", as determined by FEMA pursuant to the Disaster Relief Act of 1974, on the effective date of this Compact.

8. To the extent necessary to permit FEMA to fulfill its obligations under this Article following the declaration of a major disaster or emergency, the Government of the Marhall Islands or the Federated States of Micronesia concerned shall, as set forth in the Exchange of Notes referred to in paragraphs 4 and 5 of this Article:

(a) make available to FEMA, at no cost, equipment or facilities in its territory, including facilities necessary for communications:

(b) permit FEMA to operate telecommunications services in its territory;

(c) endeavor to make available radio frequencies for the exclusive use by FEMA;

(d) assist FEMA representatives in inter-island and intra-island movement for the purpose of accomplishing predeclaration damage assessment, post-declaration damage survey and the provision of disaster assistance to include the movement of supplies and equipment; and

(e) in addition to the periodic audit provisions of Section 233 of the Compact, upon request, provide representatives of FEMA and the Controller General of the United States access to any books, documents, papers, and records that pertain to federal funds, equipment and supplies received under this Article, for the purpose of audit and examination.

9. The Governments of the Marshall Islands and the Federated States of Micronesia shall each set forth in a governmental emergency plan the procedures and assignments of responsibility which are required for each Government to prepare for and respond to disasters and to facilitate the delivery of disaster assistance by the Government of the United States.

10. The Government of the Marshall Islands or the Federated States of Micronesia may appeal any determination of the Regional Director related to federal assistance provided under this Article. An appeal shall first be submitted to the Regional Director of FEMA for reconsideration; if such appeal is denied, the Government may submit a second appeal in accordance with FEMA regulations. Action on the second appeal shall be final.

Article XI

Implementation of Section 221(b) of the Compact

1. The Government of the United States recognizes the special needs of the Marshall Islands and the Federated States of Micronesia, particularly in the fields of education and health care. The Governments of the Marshall Islands and the Federated States of Micronesia have determined that their special needs, particularly in the fields of education and health care, can be addressed through provision by the Government of the United States of a special block grant of assistance. In light of this determination and in implementation of Section 221(b) of the Compact, the Government of the United States shall assist those Governments in meeting their special needs through provision of the assistance set forth in this Article.

2. The Government of the United States shall provide annually to each of the Governments of the Marshall Islands and the Federated States of Micronesia a special block grant to be used in accordance with the purposes set forth in paragraph 3 of this Article. Except as otherwise provided pursuant to Section 221(b) of the Compact, the annual amount of this special block grant shall be $3 million for the Government of the Marshall Islands and $7 million for the Government of the Federated States of Micronesia.

3. The special block grant provided by the Government of the United States is divided into the program categories set forth in this paragraph. In any year, the Government of the Marshall Islands or the Federated States of Micronesia may dedicate its overall block grant to any combination of these program categories subject to the guidelines set forth in paragraph 5 of this Article. The special block grant provided pursuant to Section 221(b) of the Compact and this Article is intended to complement the programs of the Governments of the Marshall Islands and the Federated States of Micronesia in the same program categories.

(a) Health Care Program Category

Funding dedicated to the health care program category may support program efforts including the following areas:

-- Preventive Health Care and Services;

-- Maternal and Child Health Services;

-- Alcohol, Drug Abuse and Mental Health;

-- Primary Health Care including provision of grants to private non- profit, public or governmental entities for planning, development and operation of community health centers and for the delivery of family health services;

-- Social Services including support for private non-profit, community, public or governmental efforts in child care services, family planning, day-care services, counseling, and preparation and delivery of meals or other health support services; and

-- Community Services including support for in the area of emergency health assistance, community health systems rehabilitation or reestablishment and housing.

(b) Education program category

Funding dedicated to the education program category may be used to support programs including the following areas:

-- Vocational Education including support for private non-profit, public and governmental institutions of vocational education and maintenance of vocational education physical plants;

-- Primary and Secondary Education including grants to public or private non-profit primary and secondary educational institutions for curriculum development, staffing and personnel, supplies, teacher training, and maintenance of primary and secondary education physical plants;

-- Post-secondary Education including grants to private non-profit or public institutions of post-secondary education, maintenance of post-secondary education physical plants, curriculum development, teacher training and recruitment; and

-- Educational planning and research.

(c) Technical Assistance

Funding provided in this program category may be used by the Governments of the Marshall Islands and the Federated States of Micronesia to employ technical experts in any area of specific need. This technical assistance may be used as transitional assistance or to mount sustained program efforts including the training of local personnel in the program areas.

(d) Housing Assistance

Funding dedicated to this program category may be used generally for housing assistance programs sponsored by the Government of the Marshall Islands or the Federated States of Micronesia including guarantees of commercial loans for initial construction or improvements.

(e) Food Supplement Assistance

Funding dedicated to this program category may be used to support governmental efforts and programs including those designed to ensure that the citizens of the Marshall Islands or the

Federated States of Micronesia are not without resources to meet minimum nutritional requirements.

4. The Governments of the Marshall Islands and the Federated States of Micronesia shall each present annual special block grant program plans to the Government of the United States which plans shall set forth the purposes for which the special block grant funding shall be used. Each annual special block grant program plan may take any form which is most convenient to the Government submitting it but the plan must indicate that the funds will be expended in a manner consistent with paragraphs 3 and 5 of this Article.

5. The use of the special block grant funds by the Government of the Marshall Islands or the Federated States of Micronesia shall comply with the guidelines set forth in this paragraph.

(a) Transferability.

Funding may be transferred by the Government of the Marshall Islands or the Federated States of Micronesia among specific program purposes within the program categories set forth in paragraph 3 as well as among the program categories from year to year.

(b) Guidelines for expenditures.

Funding available to the Governments of the Marshall Islands and the Federated States of Micronesia in their annual special block grant allocations may not be used for the following purposes:

-- cash assistance payments to individual citizen program recipients which totals more than ten percent of any year's total allocation to the Government concerned;

-- payment to or support of for-profit organizations;

-- investment in any interest bearing instruments;

-- purchase of equipment not primarily related to the program category purposes set forth in paragraph 3.

-- purchase of technical assistance or services from any individual government other than the Government of the United States or the Government of the Marshall Islands or the Federated States of Micronesia.

In any year, not more than 10% of the total annual allocation of special block grant funds available to the Government of the Marshall Islands or the Federated States of Micronesia may be used for administrative expenses attendant to program or service delivery, exclusive of medical referral and other transportation costs directly related to delivery of programs and services to recipients.

(c) Audit.

The Governments of the Marshall Islands and the Federated States of Micronesia shall keep current records of all funding transactions of the special block grant funds and shall make such records available to the Government of the United States in connection with any audits conducted pursuant to Section 233 of the Compact.

6. Funds made available by the Government of the United States to the Governments of the Marshall Islands and the Federated States of Micronesia pursuant to Section 221(b) of the Compact and this Article do not require any matching with local funds.

7. In the event that the audit conducted pursuant to Section 233 of the Compact and paragraph 5(c) of this Article reveals that the expenditure of funds by the Government of the Marshall Islands or the Federated States of Micronesia, respectively, in connection with a prior year special block grant was not in conformity with the requirements of this Article, the Government of the United States may withhold, for the subsequent year, special block grant funding which would otherwise be made available to the Government not in conformity. Should the Government of the United States determine to withhold special grant funding pursuant to this paragraph, such action shall be subject to the consultation and dispute resolution provisions of Article II of Title Four of the Compact. The Government of the United States and the concerned recipient government shall consult regarding the nature of actions required.

8. Funding for the special block grant shall be disbursed by the Government of the United States to the Governments of the Marshall Islands and the Federated States of Micronesia in the same fashion as the current account grant funding referred to in Article I of Title Two of the Compact.

Article XII

Transition and Termination of Services and Related Programs

1. Whenever the Government of the Marshall Islands or the Federated States of Micronesia desires to terminate a category of the services and related programs set forth in Articles VI, VII, VIII, IX, X or XI of this Agreement, that Government shall give written notice to the United States resident representative and to the Federal agency concerned. The Government of the United States shall assist in the orderly transfer of authority and responsibility. Unless otherwise agreed, the authority and responsibility of the Government of the United States under this Agreement shall terminate one year after receipt of such notice by the resident representative.

2. Upon termination of a category of services and related programs pursuant to paragraph 1 of this Article, the applicability of all laws of the United States, its regulations, practices, policies, treaties, conventions, or arrangements, which are applicable to that category solely by virtue of this Agreement, shall cease to be applicable in the territory of the Government which has given notice, and any authority and responsibility of the Government of the United States for the conduct of foreign affairs in respect to such services and related programs shall also cease.

Article XIII

Effective Date, Amendment and Duration

1. This Agreement shall enter into force simultaneously with the Compact; its related Exchanges of Notes shall enter into force in accordance with their own terms.

2. The provisions of this Agreement may be amended as to all of the Governments of the Marshall Islands and the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement.

3. The provisions of this Agreement or its related Exchanges of Notes may be amended as to any one of the Governments of the Marshall Islands or the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement. The effect of any amendment made pursuant to this Section shall be restricted to the relationship between the Governments agreeing to such amendment, but the other Governments signatory to this Agreement shall be notified promptly by the Government of the United States of any such amendment.

4. This Agreement shall remain in force for a period of fifteen years, subject to Section 231 and Article IV, Title Four of the Compact.

5. This Agreement may be accepted, by signature or otherwise, by the Government of the United States, the Government of the Marshall Islands and the Government of the Federated States of Micronesia. Each Government accepting this Agreement shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Federal Programs and Services Agreement which shall come into effect in accordance with its terms between the Government of the United States and the other Governments signatory to this Agreement.

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE FEDERATED STATES OF MICRONESIA

FEDERAL PROGRAMS AND SERVICES AGREEMENT
Concluded Pursuant to
Article II of Title Two and Section 232 of
the Compact of Free Association

DONE AT Majuro, Marshall Islands, this 25th day of June, one thousand, nine hundred eighty-three

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

- - - - - - -

DONE AT Majuro, Marshall Islands, this 25th day of June, one thousand, nine hundred eighty-three

FOR THE GOVERNMENT

OF

THE MARSHALL ISLANDS

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FEDERAL PROGRAMS AND SERVICES AGREEMENT

AGREED MINUTES

Federal Programs and Services Agreement: The provisions of this Agreement relating to technical assistance to be provided in connection with specific programs and services are without prejudice to the provision of technical assistance pursuant to Section 226 or other provisions of the Compact.

Article II, paragraph 6, Legal Status of Programs and Related Services, Federal Agencies, United States Contractors and United States Personnel: Paragraph 6 is without prejudice to the Government concerned adopting laws and regulations which require the giving of notice of such transfer.

Article VI, Postal Services and Related Programs, paragraph 10: This Agreement does not impair the authority of the Governments of the Marshall Islands or the Federated States of Micronesia, pursuant to paragraph 1 of this Article, to enact laws and promulgate regulations governing the operation of their respective local postal services.

Article VIII, Civil Aviation Safety Services and Related Programs: The Signatory Governments intend that aviation safety authorities be in place in the Marshall Islands and the Federated States of Micronesia on or as soon after the effective date of this Agreement as is necessary or practicable. To this end, the Government of the United States agrees to provide FAA technical assistance in the preparation of aviation safety statutes and regulations for the Governments of the Marshall Islands and the Federated States of Micronesia. On or after the effective date of this Agreement, such technical assistance shall be provided through agreements concluded pursuant to paragraph 4 of this Article. Prior to the effective date of this Agreement, such technical assistance shall be provided only if funding is obtained to reimburse the FAA for such assistance. The Governments of the Marshall Islands and the Federated States of Micronesia have been advised that such funds will have to be provided by the Government receiving FAA technical assistance should such funds not otherwise be available.

Article IX, Civil Aviation Economic Services and Related Programs: It is the intention of the Government of the United States to provide to the Government of the Federated States of Micronesia assistance in the negotiation of air rights with third countries, or to negotiate such rights on behalf of those Governments, if mutually agreed as provided for in paragraph 3 of Article IX of this Agreement. Such assistance will be provided by the United States in as timely and effective a manner as available personnel and resources permit, and will not be unreasonably withheld. Should the Government of the United States determine that it would not be consistent with the interests of the United States to agree to provide such assistance in accordance with a particular request

AGREED MINUTES

for same by the Government of the Federated States of Micronesia, the Government of the United States shall advise that Government of the basis for such determination.

Article IX, Civil Aviation Economic Services and Related Programs: The Government of the United States has notified the Government of the Federated States of Micronesia that it is the intention of the Government of the United States that its consent to the classification of a foreign air carrier as a Freely Associated State Air Carrier, shall be conditioned upon the carrier's demonstration to the satisfaction of the Civil Aeronautics Board that it is substantially owned and effectively controlled by citizens of the Federated States of Micronesia or the United States.

Article XI, Implementation of Section 221(b) of the Compact, paragraph 5(b): The Governments of the Marshall Islands and the Federated States of Micronesia may, consistent with the expenditure guidelines set forth in paragraph 5(b), purchase technical assistance from the Government of the United States of America, its territories and possessions, the District of Columbia, Guam, the Virgin Islands, American Samoa, the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

Article XI, Implementation of Section 221(b) of the Compact, paragraph 5(b): The provisions of paragraph 5(b) of the Compact for payments to or support of for-profit organizations are not intended to preclude acquisition of goods and services for public purposes within the programs categories set forth in paragraph 3 of Article XI.

Article XI, Implementation of Section 221(b) of the Compact, paragraph 7: Should the United States determine to withhold special grant funding from the Federated States of Micronesia pursuant to paragraph 7 of Article XI, such withholding action shall be effective three months after the Government of the Federated States of Micronesia receives notice of the intention of the Government of the United States. During this period, the Government of the United States and the Government of the Federated States of Micronesia shall consult to determine the nature of the actions which, if taken, would result in restoration of the special block grant funding which the Government of the United States has determined to withhold.

AGREEMENT
CONCLUDED PURSUANT TO SECTION 234 OF THE COMPACT OF FREE ASSOCIATION

Section 234 of the Compact of Free Association (the Compact) provides that title to the property of the Government of the United States which is situated in the Trust Territory of the Pacific Islands, or which has been acquired by the Government of the United States for use by the Government of the Trust Territory of the Pacific Islands, on or before the day preceding the effective date of the Compact shall vest in the Governments of the Marshall Islands and the Federated States of Micronesia. This vesting of title shall be without reimbursement or transfer of funds by or from the Governments of the Marshall Islands and the Federated States of Micronesia. Title to property of the Government of the United States for which the Government of the United States determines a continuing requirement shall remain vested in the Government of the United States.

United States Public Law 96-597 (94 Stat. 3477) provides in Section 402 that all right, title and interest of the Government of the United States in personal property situated in the Trust Territory of the Pacific Islands shall be transferred to the Government of Palau, the Marshall Islands, the Federated States of Micronesia or the Northern Mariana Islands, without reimbursement by any of them. The High Commissioner of the Trust Territory of the Pacific Islands is required to establish a list of distribution of the property among the recipient governments and in consultation with them. Only property which is surplus to the needs of the Government of the United States shall be included in this list for transfer.

In light of Section 234 of the Compact and of Section 402 of United States Public Law 96-597, the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia confirm their mutual understanding as follows:

1. Identity of Intent

Section 234 of the Compact and Section 402 of United States Public Law 96-597 both have the intention of transferring to the Governments of the Marshall Islands and the Federated States of Micronesia title to property owned but not further required by the Government of the United States, which is situated in the Trust Territory of the Pacific Islands.

2. Authority for Transfer of Title to Property

The Government of the United States confirms that the property which it contemplates will be transferred under Section 234 of the Compact of Free Association or under Section 402 of United States Public Law 96-597 is transferred pursuant to the legislative authority contained in those instruments. In accordance with its terms Section 234 of the Compact provides legislative authority for the transfer of title to property of the Government of the United States for the full period of its effectiveness.

3. Timing of Transfer of Title

United States Public Law 96-597 directs that title to the property in question shall vest in the recipient governments. Prior to the effective date of the Compact, transfer of title to the property in question shall be governed by United States Public Law 96-597. The Compact, as of its effective date, shall provide the legislative authority for the transfer of title to the property in question to the Governments of the Marshall Islands and the Federated States of Micronesia.

4. Future Transfers of Property

If, at any time after the effective date of the Compact of Free Association and during the period of effectiveness of Section 234 of the Compact, the Government of the United States determines that it no longer has a continuing requirement for any property which would otherwise have been transferred in accordance with paragraph 3 of this Agreement, the Government of the United States may, at its discretion, transfer title to such property to the Government of the Marshall Islands or the Federated States of Micronesia. The identity of the recipient government shall be the same as the location of the property.

5. Ancillary Understandings

Any understandings or agreements entered into by the High Commissioner of the Trust Territory of the Pacific Islands and the Governments of the Marshall Islands and the Federated States of Micronesia in the implementation of Section 402 of United States Public Law 96-597 and with respect to property addressed in Section 234 of the Compact shall have full force and effect as though the transfer of title to the property in question had taken place under the authority of Section 234 of the Compact.

The Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia agree that the list of distribution established by the High Commissioner of the Trust Territory of the Pacific Islands shall, at the time of its publication, be attached to this Agreement as Annex A.

The Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia further agree that this Agreement constitutes the separate agreement referred to in Section 234 of the Compact.

This Agreement may be accepted, by signature or otherwise, by the Government of the United States, the Government of the Government of the Marshall Islands and the Government of the Federated States of Micronesia. Each Government accepting this Agreement shall possess an original English language version.

IN WITNESS WHEREOF, the respective representatives, duly authorized for the purpose, have signed the present Agreement.

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE FEDERATED STATES OF MICRONESIA

AGREEMENT
CONCLUDED PURSUANT TO SECTION 234 OF
THE COMPACT OF FREE ASSOCIATION

DONE AT Majuro, Marshall Islands, this 25th day of
June, one thousand, nine hundred eighty-three

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

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DONE AT Majuro, Marshall Islands, this 25th day of
June, one thousand, nine hundred eighty-three

FOR THE GOVERNMENT

OF

THE MARSHALL ISLANDS

STATUS OF FORCES AGREEMENT
Concluded Pursuant to Section 323 of The Compact of Free Association

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Agreement in Implementation of Section 323 of The Compact of Free Association

Status of Forces Agreement

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STATUS OF FORCES AGREEMENT
Concluded Pursuant to Section 323 of
The Compact of Free Association

This Agreement is concluded by the Signatory Governments and sets forth the legal status of the Armed Forces of the United States, their members, and associated civilians, while present in the Marshall Islands or the Federated States of Micronesia pursuant to Section 323 of the Compact of Free Association (the Compact).

Article I

Definitions

1. The Definition of Terms set forth in Article VI of Title Four of the Compact is incorporated into this Agreement.

2. For the purposes of this Agreement only, the following terms shall have the following meanings:

(a) "Armed Forces of the United States" means the land, sea and air armed forces of the United States of America, including the Coast Guard.

(b) "United States Contractors" means the legal entities, including corporations and natural persons, present in the Marshall Islands or the Federated States of Micronesia for the purpose of executing their contracts with the Government of the United States, or subcontracts of such contracts, in support of the Armed Forces of the United States and designated as such by the Government of the United States. The term "United States Contractors" does not include local contractors.

(c) "Local Contractors" means the legal entities, including corporations and natural persons organized under the laws of, and who are in, the Marshall Islands or the Federated States of Micronesia, respectively.

(d) "United States Personnel" means anyone who is included in in any of the following categories:

(1) "members of the force" -- all military personnel, notwithstanding their citizenship or nationality, on duty with the Armed Forces of the United States who are in the Marshall Islands or the Federated States of Micronesia;

(2) "members of the civilian component" -- all civilian persons, notwithstanding their citizenship or nationality, except local hire personnel, who are in the Marshall Islands or the Federated States of Micronesia, and who are in the employ of, serving with, or accompanying the Armed Forces of the United States;

(3) "contractor personnel" -- natural persons, who are United States citizens or nationals or United States permanent resident aliens, except local hire personnel, who are in the Marshall Islands or the Federated States of Micronesia, and who are United States contractors or officers or employees of United States contractors; or

(4) "dependents" -- the spouses and children of persons included in paragraphs 2(d)(1), 2(d)(2) and 2(d)(3) of this Article and, while members of the household of such persons, other relatives or wards of such persons or their spouses.

(e) "Third Country Contractor Personnel" means natural persons other than United States personnel or local hire personnel who are in the Marshall Islands or the Federated States of Micronesia and who are United States contractors or officers of employees of United States contractors or dependents of any of them.

(f) "Local Hire Personnel" means citizens and nationals of the Marshall Islands or the Federated States of Micronesia, who are employed in the Marshall Islands or the Federated States of Micronesia, respectively, by the Armed Forces of the United States or United States contractors.

(g) "Defense Sites" Means "Military Areas and Facilities" as defined in Section 461 (i) of the Compact.

(h) "Judge" means any judicial officer of a Signatory Government who has the authority to issue a warrant of arrest or its equivalent and for purposes of this Agreement, except for paragraph 6(c) of Article XII, shall also include judicial officers certified as such by the Government concerned.

Article II

Movement

1. Consistent with the Compact, this Agreement and any other agreements concluded between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia in accordance with Sections 321 and 323 of the Compact:

(a) All aircraft, vessels and vehicles operated by, for, or under the control of the Armed Forces of the United States or United States contractors shall enjoy freedom of movement in the Marshall Islands and the Federated States of Micronesia;

(b) Such aircraft, vessels and vehicles shall be operated in a manner which minimizes danger to persons and property and interference with trade, commerce, exploration and exploitation of living and non-living resources of the sea; and

(c) Movement of such aircraft, vessels and vehicles in the Marshall Islands and the Federated States of Micronesia, including access to and use by them of defense sites, ports, harbors and airfields, shall not be subject to any taxes, fees or other charges, except those fees or other charges set forth in paragraph 2 of this Article.

2. The Armed Forces of the United States and United States contractors shall pay, at generally prevailing rates unless otherwise agreed, for specific services rendered at their request, including materials received at their request in connection with the use of ports, harbors and airfields in the Marshall Islands and the Federated States of Micronesia. Such services and materials may include fuel, towing, mechanical servicing and utilities.

Article III

Entry and Departure

1. The Government of the United States may bring into the Marshall Islands and the Federated States of Micronesia:

(a) United States personnel and United States contractors; and

(b) Third country contractor personnel in a manner consistent with those laws of the Marshall Islands or the Federated States of Micronesia, respectively, relating to the exclusion of individual, undesirable aliens and taking into account paragraph 5 of this Article and Article IV of this Agreement.

2. United States personnel shall be exempt from the passport and visa laws and regulations of the Marshall Islands and the Federated States of Micronesia. Taking into account paragraph 1(b) of this Article and Article IV of this Agreement applications of third country contractor personnel for visas shall be granted or denied expeditiously. All such personnel shall comply with medical immunization requirements of the Marshall Islands and the Federated States of Micronesia, respectively.

(a) No United States personnel or third country contractor personnel shall acquire any right to permanent residence or domicile solely as a result of their being United States personnel or third country contractor personnel.

(b) United States personnel shall be exempt from laws and regulations of the Marshall Islands and the Federated States of Micronesia on the entry, departure, registration and control of aliens and foreign agents.

3. Upon entry into or departure from the Marshall Islands or the Federated States of Micronesia, United States personnel shall have in their possession official orders or documents certifying the status of the individual or group. Such orders or documents shall be shown on request to the appropriate authorities of the Government concerned.

4. For the purpose of their identification while in the Marshall Islands or the Federated States of Micronesia, United States personnel ten years of age or older shall have in their possession a personal identification card authorized by the Government of the United States which shall show the name, date of birth, status, and photograph of the bearer. Such card shall be shown on request to the appropriate authorities of the Government concerned.

5. Should the Government of the Marshall Islands or the Federated States of Micronesia request the removal from the Marshall Islands or the Federated States of Micronesia, respectively, of any United States personnel or any third country contractor personnel, the

request shall be referred to the Joint Committee established pursuant to Section 351 of the Compact for resolution in accordance with that Section, unless the Government of the United States receives the person concerned within its own territory or otherwise effects the departure of such person outside the territory of the requesting Government. Section 351 of the Compact is incorporated by reference into, and becomes a part of, this Agreement. If the Joint Committee so determines, the person concerned shall immediately become subject to the jurisdiction of the Government of the Marshall Islands or the Federated States of Micronesia in accordance with its laws.

6. Transportation costs attendant to the departure and removal of third country contractor personnel shall be the responsibility of the Government of the United States.

Article IV

Utilization of Contractors and Employment of Labor

1. In the establishment, maintenance, and use and operation of defense sites and in the execution of obligations undertaken by the Government of the United States in the Compact and its related Agreements, the Armed Forces of the United States, United States contractors and local contractors:

(a) may employ persons possessing requisite skills and qualifications. Employment preference shall be given, without discrimination, to citizens, nationals and permanent resident aliens of the Marshall Islands or the Federated States of Micronesia, in their respective jurisdictions, and of the United States. In the employment of such persons pursuant to the preferences set forth in this paragraph, the Armed Forces of the United States and United States contractors shall exercise their best efforts to employ persons present in the Marshall Islands or the Federated States of Micronesia, respectively; and

(b) shall utilize without discrimination, consistent with the laws and regulations of the United States, qualified local contractors and contractors which are legal entities of the United States. The Armed Forces of the United States and United States contractors shall ensure that the specifications and instructions for contract bids shall permit such free and full competition as is consistent with the procurement of the goods and services needed by the Government of the United States.

2. Prior to the employment of third country personnel or the utilization of third country contractors, the Government of the United States shall notify the Government concerned and shall consult, if requested, with that Government as to the availability of qualified local hire personnel or qualified local contractors.

3. The laws and regulations of the Marshall Islands or the Federated States of Micronesia shall not apply to the terms and conditions of employment of United States personnel or third country contractor personnel by the Armed Forces of the United States or United States contractors. The Government of the Marshall Islands or the Federated States of Micronesia shall not require United States personnel, third country contractor personnel or United States contractors to obtain any license, permit or certificate, or to undergo any examination, in connection with the performance of their duties on behalf of the Armed Forces of the United States.

4. In the employment of local hire personnel by the Armed Forces of the United States and United States contractors, the Government of the United States shall adopt measures consistent with the standards of local labor laws to the extent they are compatible with the laws, regulations and operational requirements of the United States.

Article V

Taxes and Customs

1. The following are exempt from any tax, fee or similar charge imposed by the Government of the Marshall Islands or the Federated States of Micronesia:

(a) The services, activities, facilities, equipment, material, income or any other property or transactions of the Armed Forces of the United States or United States contractors;

(b) The ownership, possession, use, or transfer inter se by United States personnel, by death or otherwise, of real or personal property, tangible or intangible, wherever located; and

(c) Income received by United States personnel for services with or employment by the Armed Forces of the United States or United States contractors, or from sources outside the territory of the Government concerned, except that United States contractor personnel and dependents who are also United States contractor personnel are not exempt from a personal income tax generally applicable within the Marshall Islands or the Federated States of Micronesia up to a level of five percent of their annual income derived from their employment in the Marshall Islands or the Federated States of Micronesia, respectively, by United States contractors.

2. Third country contractor personnel shall be subject to income tax generally applicable in the Marshall Islands and the Federated States of Micronesia, respectively.

3. All materials, equipment and other property imported or exported by or on behalf of the Armed Forces of the United States, or United States contractors for the use or benefit of the Armed Forces of the United States, United States contractors, United States personnel, or third country contractor personnel shall be permitted entry into and exit from the Marshall Islands or the Federated States of Micronesia free from customs duties, license requirements, and other import and export taxes, fees or charges.

4. United States personnel may import into and export from the Marshall Islands or the Federated States of Micronesia furniture, household goods and personal effects for their personal or family use, including all forms of privately owned land, sea and air transportation, free from customs duties, license requirements, and other import and export taxes, fees or charges.

5. The following are exempt from customs examination by the Government of the Marshall Islands or the Federated States of Micronesia:

(a) Members of the force, members of the civilian component and the dependents of both when entering or leaving the Marshall Islands or the Federated States of Micronesia under official orders except when under leave orders;

(b) Documents under official seal, and mail in the United States military postal channels; and

(c) Cargo consigned to or shipped by the Armed Forces of the United States or United States contractors.

6. The Armed Forces of the United States, in cooperation with the Government concerned, shall take appropriate measures, including inspection, to prevent the importation of contraband and to prevent abuse of privileges granted under this Article.

7. Should property imported into the Marshall Islands or the Federated States of Micronesia under the exemptions provided by this Article subsequently be transferred to a person not entitled to such exemptions, such person shall be liable for import duties and other charges according to the laws and regulations of the Government concerned.

8. Animals and plants, including fruits and vegetables, imported by United States personnel, subject to the provisions of this Article, and by third country contractor personnel shall be subject to the laws and regulations of the Marshall Islands or the Federated States of Micronesia, respectively, governing such inspection of and restriction on such importations.

Article VI

Service Facilities

The Armed Forces of the United States may authorize the establishment, use, operation and maintenance within defense sites in the Marshall Islands or the Federated States of Micronesia of service, educational and recreational facilities. Such facilities and their related activities, including the importation, purchase, sale or dispensing of merchandise and services by them shall be exempt from all taxes, customs duties, fees, charges and license requirements of the Government of the Marshall Islands or the Federated States of Micronesia.

Article VII

Military Post Offices

The Armed Forces of the United States may establish, operate and maintain military post offices within defense sites for their use and the use of United States contractors and United States personnel. A mail facility operated by a United States contractor on behalf of the Armed Forces of the United States shall be considered a military post office within the meaning of this Article.

Article VIII

Bearing of Arms

1. Members of the force may possess and use arms when necessary to perform their official duties and, in specially designated areas in defense sites, to maintain skills to perform their official duties, in accordance with the laws and regulations governing the Armed Forces of the United States.

2. Contractor personnel may possess or use arms when acting in support of the military mission of the Government of the United States in an official capacity as law enforcement personnel or security officers designated as such by the Government of the United States in accordance with its laws and regulations.

3. Any other possession or use of arms shall be only as agreed between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia.

Article IX

Operation and Licensing of Vehicles

1. The Government of the Marshall Islands or the Federated States of Micronesia shall accept as valid, without a test or fee, the operator's permit or license or military driving permit issued to United States personnel or third country contractor personnel by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

2. Official vehicles of the Armed Forces of the United States, vehicles owned or operated by United States contractors, and privately owned vehicles of United States personnel shall be identified by individual markings or license plates issued by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands. However, the Government of the United States may use local individual markings or license plates in the Federated States of Micronesia.

(a) Official vehicles shall not be subject to the registration or safety inspection laws of the Government of the Marshall Islands or the Federated States of Micronesia.

(b) The Armed Forces of the United States may register vehicles of United States contractors and United States personnel which are not official vehicles, and may inspect such vehicles applying safety standards of general applicability in the Marshall Islands or the Federated States of Micronesia, respectively. Vehicles so registered and inspected shall be exempt from the registration and safety inspection laws of the Government of the Marshall Islands or the Federated States of Micronesia, respectively.

3. For purposes of this Article the term "vehicles" includes all forms of land, sea and air transportation.

Article X

Relinquishment of Defense Sites

1. If any installations or improvements which were constructed at the expense of the Government of the United States are to be left behind after relinquishment of a defense site or portion thereof, whether at the termination of any agreement provided for in Section 321 or 323 of the Compact or at any other date, the Government of the Marshall Islands or the Federated States of Micronesia and the Government of the United States shall consult to determine the residual value, including scrap value, if any, of any such installations or improvements to the Government concerned.

2. The Government of the United States shall take all measures practicable to ensure that every condition substantially or materially hazardous to human life, health and safety resulting from use of defense sites is removed or otherwise made safe. The Governments concerned shall consult as to what constitutes a hazard and how hazards shall be removed or otherwise made safe.

3. The Government of the United States shall have no obligation, upon relinquishment, to restore defense sites to their former condition; however, upon such relinquishment of a defense site or portion thereof, or sooner if mutually agreed, the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia shall enter into negotiations with a view to reaching an equitable arrangement for return of lands that takes due account of United States investment, the prospective use to which such lands will be used and the unique importance of land under local custom and law.

Article XI

Equipment

The Government of the United States shall retain title to equipment, materials and other moveable property brought into or acquired in the Marshall Islands or the Federated States of Micronesia and may remove such property at any time. In the event the Government of the United States wishes to dispose of such equipment, materials or other moveable property, the Government of the Marshall Islands or the Federated States of Micronesia shall have a right of first refusal to purchase such items, at an agreed upon price, after the Government of the United States has fulfilled its statutory and regulatory responsibilities including first offering such equipment to other agencies of the Government of the United States.

Article XII

Criminal Jurisdiction

1. Subject to the provisions of this Article:

(a) United States personnel are subject to the criminal jurisdiction of the Government of the Marshall Islands or the Federated States of Micronesia for offenses committed by such personnel in the Marshall Islands or the Federated States of Micronesia, respectively.

(b) The Government of the United States has the right to exercise within the Marshall Islands and the Federated States of Micronesia criminal and disciplinary jurisdiction over United States personnel for offenses punishable under the laws of the United States. In lieu of criminal or disciplinary proceedings in the Marshall Islands or the Federated States of Micronesia, the Government of the United States may elect to remove United States personnel for such proceedings elsewhere.

(c) For purposes of asserting jurisdiction under this Article, the determination of a Signatory Government as to whether an offense is punishable under its laws shall be conclusive.

2. The Government of the Marshall Islands or the Federated States of Micronesia has the right to exercise exclusive jurisdiction over United States personnel with respect to offenses committed in the Marshall Islands or the Federated States of Micronesia, respectively, which are punishable under local law, but not under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States.

3. The Government of the United States has the right to exercise exclusive jurisdiction over United States personnel with respect to offenses committed in the Marshall Islands or the Federated States of Micronesia which are punishable under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States, but not under local law.

4. The Government of the Marshall Islands or the Federated States of Micronesia and the Government of the United States have concurrent jurisdiction over United States personnel with respect to offenses committed in the Marshall Islands or the Federated States of Micronesia, respectively, which are punishable under both local laws and the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States. Whenever it is determined by the Government of the Marshall Islands or the Federated States of Micronesia that an act or omission is a punishable offense under the laws of the Marshall Islands or the Federated States of Micronesia, respectively, and it is determined by the Government of the United States that the same act or omission is a punishable offense under the laws of the United States applicable to offenses committed outside the territorial

jurisdiction of the United States, the following rules shall apply:

(a) The Government of the Marshall Islands or the Federated States of Micronesia, respectively, has the primary right to exercise jurisdiction over United States personnel in all other cases of concurrent jurisdiction, except as provided in paragraph 4(b) of this Article.

(b) The Government of the United States has the primary right to exercise jurisdiction over United States personnel in the Marshall Islands or the Federated States of Micronesia, respectively, for:

(1) Offenses committed within defense sites, including non-exclusive-use areas during periods of use by the Government of the United States under applicable military use and operating rights agreements concluded under Sections 321 and 323 of the Compact;

(2) Offenses against the property or security of the United States, or offenses against the person or property of United States personnel;

(3) Offenses arising out of the performance of official duty;

(4) Offenses committed by United States personnel who are attached to or embarked in aircraft or vessels transiting the Marshall Islands or the Federated States of Micronesia and which are operated by, for, or under the control of the Armed Forces of the United States or United States contractors; and

(5) Any other offense punishable by deprivation of liberty or by a more severe penalty. However, the Government of the Marshall Islands or the Federated States of Micronesia, respectively, has the primary right of jurisdiction to try any offense that is not a felony under local law and for which the sole penalty which shall be adjudged or imposed, if any, is a fine. Not later than the day following the third anniversary of the effective date of this Agreement, the Government of the Marshall Islands or the Federated States of Micronesia, respectively, shall have the primary right to exercise jurisdiction over any such offense which is not a felony under local law and is subject to a maximum punishment no greater than deprivation of liberty for less than six months.

(c) The Government of the Marshall Islands or the Federated States of Micronesia having the primary right to exercise jurisdiction waives that right, unless it notifies the Government of the United States of its intention to exercise such right as soon as practicable, but within 30 calendar days after notification of the offense by either Government.

(d) The Government having the primary right to exercise jurisdiction shall give sympathetic consideration to a request from the other Government concerned for a waiver of such primary right in cases the requesting Government considers to be of particular importance.

(e) The provisions of this Article shall be reviewed by the Signatory Governments concerned at anytime on request by one of them, but not later than during the year following the fifth anniversary of the effective date of this Agreement in order to determine whether any modification of its provisions may be appropriate in light of circumstances then prevailing.

5. Except for laws officially transmitted in English to the Government of the United States by the Government concerned, ignorance of the laws of the Marshall Islands or the Federated States of Micronesia shall constitute a defense.

6. The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia shall assist each other in the arrest or detention of United States personnel in the Marshall Islands or the Federated States of Micronesia, respectively.

(a) The Government concerned shall promptly notify the Government of the United States of the arrest or detention of any United States personnel.

(b) Members of the force accused or suspected of the commission of any offense in the Marshall Islands or the Federated States of Micronesia shall remain in or be transferred to the custody of the Government of the United States unless the Government of the United States declines such custody. The Government of the United States shall make available for purposes of investigation or trial members of the force in its custody over whom the Government of the Marshall Islands or the Federated States of Micronesia has the right to exercise jurisdiction pursuant to this Agreement. Upon completion of all judicial proceedings, including appellate proceedings, such personnel shall be transferred to the Government of the Marshall Islands or the Federated States of Micronesia concerned if a sentence providing for deprivation of liberty has been finally adjudged.

(c) The provisions of Title Four of the Agreement on Mutual Assistance in Law Enforcement Matters shall be applicable to United States personnel who are citizens or nationals of the United States.

(d) The Government of the United States may request custody of a prisoner who is a member of the force, deprived of liberty by order of a Court of the Marshall Islands or the Federated States of Micronesia. The Government concerned shall transfer such prisoner to the custody of the Government of the United States which shall provide for the carrying out of the terms of such deprivation of liberty.

7. The Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia shall assist each other in the carrying out of all necessary investigations into offenses within the scope of this Article, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The transfer of such objects may be made subject to their return within the time specified by the Government delivering them.

8. Where a person has been tried in accordance with the provisions of this Article, either by the Government of the United States or the Government of the Marshall Islands or the Federated States of Micronesia, and has been acquitted or convicted, or has been pardoned, he may not be tried again within the same territory for the same offense by either Government. This paragraph is without prejudice to the authority of the Armed Forces of the United States to try a member of the force for any violation of rules of discipline.

9. United States personnel prosecuted under the jurisdiction of the Government of the Marshall Islands or the Federated States of Micronesia shall be entitled to all guarantees and rights provided by the constitution and laws of the prosecuting Government for its own citizens and to the following guarantees and rights to the extent that they are not provided by that constitution and those laws:

(a) To a prompt and speedy trial;

(b) To be tried only in a court presided over by a qualified judge trained in the law;

(c) To be informed, in advance of trial, of the specific charge or charges made against such person;

(d) To be confronted with and permitted to cross-examine the witnesses against such person;

(e) To have compulsory process for obtaining witnesses in favor, of such person, if the witnesses are within the jurisdiction of the court;

(f) To have legal representation of such person's own choice for such person's defense throughout all investigative and judicial phases of the entire proceedings or, at such person's election, to have legal representation appointed by the court at no cost to such person under the same terms and conditions applicable to citizens of the Marshall Islands or the Federated States of Micronesia, as appropriate;

(g) To have the services of a competent interpreter, if such person considers it necessary;

(h) To communicate with a representative of the Government of the United States and to have such a representative present at trial and at all stages of the proceedings, including pretrial hearings and examinations and appeals;

(i) Not to be charged with a criminal offense on account of any act or omission which did not constitute a criminal offense under the statutory law of the prosecuting Government at the time it was committed or be subjected to punishment more severe or a procedure less favorable than the one applicable at the time the offense was committed;

(j) To be present at trial which shall be public;

(k) To have the burden of proof placed upon the prosecution;

(l) To be protected from the use of a confession or other evidence obtained by unlawful or improper means;

(m) Not to be compelled to testify against or otherwise incriminate himself or herself;

(n) Not to be required to stand trial while physically or mentally unfit to stand trial and participate in his or her defense;

(o) Not to be tried or punished more than once for the same offense, nor to be subject to a greater punishment after appeal than was adjudged initially by the court of first instance;

(p) To have the right to appeal a conviction or sentence;

(q) Not to be subject to an appeal by the prosecution from an acquittal, or a finding of not guilty;

(r) To have credited to any sentence of confinement any related period of pretrial confinement in a confinement facility of the Government of the United States or the Government of the Marshall Islands or the Federated States of Micronesia; and

(s) Not to be subject to the application of martial law or trial by military courts or special tribunals.

10. United States personnel who have been tried in courts of the Government of the Marshall Islands or the Federated States of Micronesia, and who have been convicted and are serving sen-

tences in confinement facilities of such Government or United States personnel in pretrial custody of such Government, shall be entitled to receive visits not less than monthly from members of their families and from representatives of the Government of the United States. Health and comfort items including clothing, medicine and food may be delivered to and used by such United States personnel in confinement or pretrial custody.

11. Facilities of the Government of the Marshall Islands or the Federated States of Micronesia used for confinement or detention of United States personnel shall meet standards agreed upon by the Government of the United States and the Government concerned.

12. United States personnel convicted by courts of the Government of the Marshall Islands or the Federated States of Micronesia shall not be subject to the death penalty, nor to any form of cruel or unusual punishment.

13. This Article is without prejudice to the authority of the Government of the United States to exercise administrative authority over United States personnel.

Article XIII

Additional Criminal Jurisdiction

In addition to the rights set forth in Article XII, the Government of the United States shall have the primary right to exercise jurisdiction over all United States citizens or nationals of the United States who are not United States personnel for offenses punishable under the laws of the United States committed within defense sites while in use by the Government of the United States in the Marshall Islands or the Federated States of Micronesia. The Government concerned shall assist the Government of the United States in the arrest of any such person. The custody of any such person shall remain in or be transferred to the Government of the United States unless such custody is declined. The waiver provisions of Article XII, paragraph 4, shall apply.

Article XIV

Respect for Local Law

The Government of the United States shall adopt and enforce measures consistent with the Compact and this Agreement as may be necessary to ensure that United States personnel, United States contractors and third country contractor personnel respect the laws of the Marshall Islands and the Federated States of Micronesia, refrain from any activity inconsistent with this Agreement, and refrain from any political activity concerning the Marshall Islands or the Federated States of Micronesia, respectively.

Article XV

Claims

1. The authorities of the Armed Forces of the United States shall pay just and reasonable compensation in settlement of meritorious noncontractual claims arising out of acts or omissions occurring prior or subsequent to the effective date of this Agreement in the Marshall Islands or the Federated States of Micronesia of members of the force; of members of the civilian component; and, if the act or omission was done in the performance of official duty, of local-hire personnel who are employed by the Armed Forces of the United States. All such claims shall be processed and settled by the authorities of the Armed Forces of the United States in accordance with the laws and regulations of the United States. Any such claims which cannot be settled as provided for in this paragraph, and which are espoused by the Government concerned, shall be referred to the Joint Committee established pursuant to Section 351 of the Compact.

2. Contractual claims against the Armed Forces of the United States shall be settled in accordance with the disputes clause of the contract if any, and the laws of the United States relating to the resolution of such disputes.

3. Subject to the provisions of Article XII of this Agreement, members of the force, members of the civilian component and, if the act or omission was done in the performance of official duty, local-hire personnel shall not be subject to any proceedings in the Marshall Islands or the Federated States of Micronesia for an act or omission.

4. The Government of the United States shall facilitate appropriate arrangements between the government of any third country which has members or units of its armed forces in the Marshall Islands or the Federated States of Micronesia pursuant to Section 315 of the Compact and the Government of the Marshall Islands or the Federated States of Micronesia with respect to appropriate settlement of claims arising from the activities of such members or units.

5. Any judgment presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, pursuant to Section 174 of the Compact of Free Association shall be deemed manifestly erroneous as to law if the claim upon which such judgment is based would have been barred by the statute of limitations if such claim had been brought in a court of the United States.

6. Pursuant to Section 174 of the Compact, all claims within the scope of this Article which otherwise would have been within the scope of Section 174 of the Compact shall be settled exclusively in accordance with the provisions of this Article.

Article XVI

Currency

The Armed Forces of the United States, United States contractors and United States personnel may import into, possess and use within, and export from the Marshall Islands and the Federated States of Micronesia, United States currency. Such importation, possession, use and exportation of United States currency shall be exempt from any form of regulation, restriction, or control by the Government of the Marshall Islands or the Federated States of Micronesia. Should the Government of the Marshall Islands or the Federated States of Micronesia act pursuant to Section 251 of the Compact to institute a currency other than United States currency, the Government of the United States and the Government concerned shall consult regarding the applicability of foreign exchange laws and regulations in the jurisdiction of the Government concerned.

Article XVII

Medical Services

To the extent that appropriate services can be made available consistent with available resources and the laws and regulations of the United States, the Government of the United States shall provide, at the request of the Government concerned, medical care to citizens and nationals of the Marshall Islands and the Federated States of Micronesia in United States military medical facilities or by United States military medical personnel on a reimbursable basis under terms and conditions agreed upon between the Government of the United States and the Government concerned.

Article XVIII

Telecommunications

The Government of the United States may use local telecommunication systems and shall do so to the extent feasible. The Government of the United States in determining its uses of such systems shall take into consideration the cost and security of such systems.

(a) To the extent that the Governments of the Marshall Islands or the Federated States of Micronesia establish complete and fully effective commercial international telecommunications systems compatible with existing United States Government installations, and the Government of the United States determines such use is feasible based on the criteria above, the Government of the United States and the Government concerned shall enter into negotiations for a use arrangement which includes normal billing procedures. Following entering into such a use agreement, the Government of the United States shall withdraw or modify any authorizations for use of Defense communications systems for non-official calls by United States personnel.

(b) The Government of the United States shall encourage the use of local telecommunication systems by United States personnel for non-official purposes.

Article XIX

Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact.

2. This Agreement may be amended at any time as to the Government of the Marshall Islands or the Federated States of Micronesia by mutual consent of such Government and the Government of the United States.

3. The duration of this Agreement as between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia is for the period of effectiveness of either Title Three of the Compact or of the appropriate separate agreements entered into pursuant to Sections 321 and 323 of the Compact, whichever is the longer. Thereafter, this Agreement shall remain in force until terminated by a Signatory Government, in the following manner:

(a) Termination of this Agreement by any Signatory Government shall be effected by a written notification to either the Government of the United States or to the Government of the Marshall Islands or the Federated States of Micronesia, as appropriate. The Government of the United States shall notify all other Signatory Governments of each such notification.

(b) Termination shall take effect one year after the recipient Government has been notified, but this Agreement shall continue in force as between the Government of the United States and the remaining Signatory Governments.

4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States, the Government of the Government of the Marshall Islands and the Government of the Federated States of Micronesia. Each Government accepting this Agreement shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Status of Forces Agreement which shall come into effect in accordance with its terms between the Government of the United States and the other Governments signatory to this Agreement.

DONE AT Washington, D.C., THIS 24th DAY

OF May, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT

OF

THE MARSHALL ISLANDS

DONE AT WASHINGTON, D.C., THIS 24th DAY

OF May, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE FEDERATED STATES OF MICRONESIA

DONE AT Honolulu, Hawaii, THIS 1st DAY

OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA

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STATUS OF FORCES AGREEMENT

Agreed Minutes

Article VI, Service Facilities: The terms "service, educational and recreational facilities" include schools, commissary stores, retail exchanges and related concessions, credit unions, banking facilities, radio and television stations, recreational facilities, and social and athletic clubs.

Article VII, Military Post Offices: Such military post offices shall be established, operated and maintained exclusively pursuant to the laws and regulations governing the Armed Forces of the United States.

Article VIII, Bearing of Arms: It is the intention of the Signatory Governments that local military commanders and designated representatives of the Government concerned shall enter into an exchange of letters governing the control of privately owned arms. Such an exchange of letters may address the following:

-- registration by military authorities of all privately owned arms, and the provision of registration lists, including certificates of transfer or removal of such arms, to the Government concerned;

-- designation of target practice areas within defense sites;

-- limitations on the carrying of privately owned arms outside defense sites; and

-- other provisions for the control by military authorities of privately owned arms.

Article XV, Claims: The Signatory Governments do not intend that paragraph 6 of Article XV preclude the operation of Section 174 of the Compact, provided that paragraph 5 of Article XV governs the operation of Section 174 (c) of the Compact. The import of paragraph 6 of Article XV, read with paragraph 1 of Article XV, is as follows:

-- All claims within the scope of paragraph 1 of Article XV which arise after the effective date of this Agreement shall be processed and settled exclusively pursuant to the Foreign Claims Act, 10 U.S.C. 2734, and any regulations promulgated in implementation thereof.

-- A claim within the scope of paragraph 1 of Article XV which arises during the two year period immediately prior to the effective date of this Agreement shall also be processed and settled pursuant to the Foreign Claims Act, 10 U.S.C. 2734, unless a court action based on such claim has been initiated prior to the effective date of this Agreement and the party bringing such court action continues the court

Agreed Minute

action and proceeds in accordance with Section 174(c) of the Compact. The party bringing such court action may, prior to entry of a final judgment by the court in the action, terminate the action before the court and bring the claim under paragraph 1 of Article XV, in which instance paragraph 6 of Article XV shall govern.

-- Claims arising more than two years prior to the effective date of this Agreement may be brought only in accordance with Section 174(c) of the Compact.

-- A claim processed, settled and paid under paragraph 1 of Article XV may not subsequently be brought under Section 174(c) of the Compact. Similarly, a claim which has proceeded to judgment in a court action and is subject to certification under Section 174(c) of the Compact may not be processed and settled under paragraph 1 of Article XV.

Article XV is without prejudice to any claim addressed in Section 353 of the Compact, whether such claim arises prior or subsequent to the effective date of this Agreement.

Article XVI, Currency: Subject to Article VI this Article is not intended to authorize the establishment or operation of a private financial institution in the Marshall Islands or the Federated States of Micronesia, except in accordance with local law.

Article XVII, Medical Services: The term "military medical facilities" as used in this Article does not include the contractor-operated medical facility at Kwajalein Island defense site.

Compact Of Free Association
Bilateral Agreements

Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association

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Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association

PREAMBLE

The Government of the United States and the Government of the Marshall Islands:

In recognition of the enduring friendship between the United States of America and the Republic of the Marshall Islands;

In reaffirmation of the Compact of Free Association (the Compact) between the Government of the United States and the Government of the Marshall Islands;

In fulfillment of the provisions of Section 177 of the Compact relating to the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958 (the Nuclear Testing Program);

In recognition of the authority and responsibility of the Government of the Marshall Islands to provide medical and health care to all of the people of the Marshall Islands; and the expressed desire of the Government of the Marshall Islands to include in its integrated, comprehensive and universal medical health-care system, the health-care and surveillance programs and radiological monitoring activities contemplated in United States Public Law 95-134 and United States Public Law 96-205;

In recognition of the authority and responsibility of the Government of the Marshall Islands to provide for the welfare of all the people of the Marshall Islands; and the expressed desire of the Government of the Marshall Islands to create and maintain, in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program, including the resolution of resultant claims; and

In recognition of contributions and sacrifices made by the people of the Marshall Islands in regard to the Nuclear Testing Program;

NOW THEREFORE AGREE:

Article I

The Fund

Section 1 - Creation

In fulfillment of its obligations under Section 177 of the Compact, the Government of the United States shall provide to the Government of the Marshall Islands, on the effective date of this Agreement, the sum of $150 million to create a fund (the Fund).

Section 2 - Management

In furtherance of the desire of the Government of the Marshall Islands to provide, in perpetuity, a means to address past, present and future consequences of the Nuclear Testing Program:

(a) The Government of the Marshall Islands shall cause the Fund to be invested with the performance goal of producing for each year of the existence of the Fund average annual proceeds of at least $18 million (Annual Proceeds) for disbursement in accordance with this Agreement.

(b) The Government of the Marshall Islands, in order to achieve the performance goal of the Fund, shall retain as trustee and manager of the Fund (Fund Manager) an United States investment management company which has demonstrated substantial experience in the administration of trusts and which has funds under management in excess of $1 billion. The Fund Manager shall make disbursements in accordance with the provisions of this Agreement to the designated recipients in the name of "The Republic of the Marshall Islands Nuclear Claims Fund".

(c) The Fund shall be invested in bonds, notes and other instruments of investment grade and of United States nationality, including both debt and equity issues, common or preferred stocks, money market funds, certificates of indebtedness and mutual funds. The Government of the United States shall impose no transaction fee or intermediary charge on the investment of the Fund in instruments of the Government of the United States.

(d) Except as may be otherwise required by this Agreement and to achieve its desire to provide a perpetual means of addressing the special needs and unique circumstances of the people of the Marshall Islands resulting from the Nuclear Testing Program, the Government of the Marshall Islands shall not permit nor shall the Fund Manager make disbursements from the Fund.

(e) For purposes of taxation only, the trust into which the Fund is placed pursuant to this Article shall be deemed to be a charitable trust under the laws of the United States and the Republic of the Marshall Islands.

Article II

Distribution of Annual Proceeds

The Fund Manager shall disburse Annual Proceeds in accordance with Article III of this Agreement and as follows:

Section 1 - Health, Food, Agricultural Maintenance and Radiological Surveillance

(a) $30 million to the Government of the Marshall Islands, to be disbursed in annual amounts of $2 million for the 15-year period commencing one calendar quarter after the effective date of this Agreement. The Government of the Marshall Islands shall use these sums to obtain technical assistance, on a reimbursable basis, from the United States Public Health Service and other agencies of the Government of the United States. The Government of the United States shall provide such technical assistance including United States contractor services to assist the Government of the Marshall Islands to include, in its health-care system, health-care programs and services related to consequences of the Nuclear Testing Program and contemplated in United States Public Law 95-134 and United States Public Law 96-205. Such technical assistance shall be obtained in accordance with Section 226 of the Compact, the provisions of the Federal Programs and Services Agreement and such separate implementing agreements as may from time to time be concluded. Such technical assistance shall, at the request of the Government of the Marshall Islands, include a whole body counter and the training of its operator. The whole body counter shall be located in a suitable facility chosen and supplied by the Government of the Marshall Islands. The Technical assistance provided for in this subsection may include professional personnel services and dosimetry and bioassay services.

(b) Annual disbursements specified in this Section are in addition to the funds referred to in Sections 211(a)(3), 216(a)(2) and 221(b) of the Compact, which may also be expended by the Government of the Marshall Islands to provide its citizens with health-care programs and services elated to consequences of the Nuclear Testing Program.

(c) The Government of the Marshall Islands may dedicate any part of the annual disbursements specified in this Section to the financing, including matching financing, of other related healthcare and research programs and services of the Government of the United States which are otherwise available to the Government of the Marshall Islands.

(d) At the request of the Government of the Marshall Islands, the Government of the United States shall provide technical assistance, programs and services, on a reimbursable basis, to continue the planting and agricultural maintenance program on Enewetak and to continue the food programs of the Bikini people and the Enewetak people for as long as such technical assistance, programs and services may be required. Such technical assistance, programs and services shall be obtained in accordance with Section 226 of the Compact, the provisions of the Federal Programs and Services Agreement and such separate implementing agreements as may from time to time be concluded.

(e) $3 million to the Government of the Marshall Islands for the purpose of conducting medical surveillance and radiological monitoring activities, to be disbursed in average annual amounts of $1 million for the three-year period commencing on the effective date of this Agreement. The results of such medical surveillance and radiological monitoring activities shall be filed with the Claims Tribunal referred to in Article IV of this Agreement.

Section 2 - People of Bikini

$75 million to the Bikini Distribution Authority referred to in Article III of this Agreement, in payment of claims arising out of the Nuclear Testing Program for loss or damage to property and person of the people of Bikini, to be disbursed in quarterly amounts of $1.25 million for the 15-year period commencing one calendar quarter after the effective date of this Agreement, and which shall be distributed, placed in trust or otherwise invested as the Bikini Distribution Authority may determine consistent with this Agreement.

Section 3 - People of Enewetak

$48.75 million to the Enewetak Distribution Authority referred to in Article III of this Agreement, in payment of claims arising out of the Nuclear Testing Program for loss or damage to property and person of the people of Enewetak, to be disbursed in quarterly amounts of $812,500 for the 15-year period commencing one calendar quarter after the effective date of this Agreement, and which shall be distributed, placed in trust or otherwise invested as the Enewetak Distribution Authority may determine consistent with this Agreement.

Section 4 - People of Rongelap

$37.5 million to the Rongelap Distribution Authority referred to in Article III of this Agreement, in payment of claims arising out of the Nuclear Testing Program for loss or damage to property and person of the people of Rongelap, to be disbursed in quarterly amounts of $625,000 for the 15-year period commencing one calendar quarter after the effective date of this Agreement, and which shall be distributed, placed in trust or otherwise invested as the Rongelap Distribution Authority may determine consistent with this Agreement.

Section 5 - People of Utrik

$22.5 million to the Utrik Distribution Authority referred to in Article III of this Agreement, in payment of claims arising out of the Nuclear Testing Program for loss or damage to property and person of the people of Utrik, to be disbursed in quarterly amounts of $375,000 for the 15-year period commencing one calendar quarter after the effective date of this Agreement, and which shall be distributed, placed in trust or otherwise invested as the Utrik Distribution Authority may determine consistent with this Agreement.

Section 6 - Claims Adjudication Funds

(a) $500,000 to the Government of the Marshall Islands to provide for the establishment of the Claims Tribunal, to be disbursed prior to the first anniversary of the effective date of this Agreement.

(b) $500,000 annually to the Claims Tribunal during the term of its existence for its operation, to be disbursed in quarterly amounts of $125,000 commencing one calendar quarter after the first anniversary of the effective date of this Agreement.

(c) $45.75 million to be made available to the Claims Tribunal as necessary for whole or partial payment of monetary awards made by the Claims Tribunal pursuant to Article IV of this Agreement, to be disbursed in annual amounts of up to $2.25 million for the 3-year period commencing on the effective date of this Agreement, and in annual amounts of up to $3.25 million for the 12-year period commencing on the third anniversary of the effective date of this Agreement.

Section 7 - Other Disbursements

(a) In the event that Annual Proceeds are not sufficient to meet the disbursement schedules set forth in Sections 1 through 6 of this Article, disbursements shall be made from the Fund on an annual basis to supplement Annual Proceeds in the amount of the difference.

(b) All monetary awards made by the Claims Tribunal pursuant to Article IV of this Agreement shall be paid on an annual pro-rata basis from available funds until all such awards are paid in full. If, in any year, the annual amount made available pursuant to subsection 6(c) of this Article is not exhausted, the amount not required for that year shall remain in the Fund and shall be made available for disbursement in payment of monetary awards made by the Claims Tribunal in subsequent years.

(c) Commencing on the fifteenth anniversary of the effective date of this Agreement, not less than 75 percent of Annual Proceeds shall be available for disbursement in whole or partial payment of monetary awards made by the Claims Tribunal.

(d) Any Annual Proceeds which are not required for the disbursements set forth in Sections 1 through 6 and subsection 7(b) and 7(c) of this Article shall either be made a part of the Fund or be used by the Government of the Marshall Islands for other programs and services for the people of the Marshall Islands as their unique needs and circumstances resulting from the Nuclear Testing Program may require, including continuation of the technical assistance referred to in Section 1 of this Article, the operation of the Claims Tribunal, the survey and analysis of the radiological status of the Marshall Islands, and distributions to local government councils so that they may establish and maintain programs and services for their people as their unique needs and circumstances resulting from the Nuclear Testing Program may require.

Section 8 - Bikini, Enewetak, Rongelap and Utrik Trusts

In order to provide an additional long-term means to address consequences of the Nuclear Testing Program, the people of Bikini, Enewetak, Rongelap and Utrik shall each for their own benefit provide for the establishment of a trust funded with all or a portion of the Annual Proceeds they shall receive under this Agreement. Each trust shall be designed to provide a perpetual source of income for its respective recipients, and shall be developed in consultation with the Government of the Marshall Islands. The understandings reached shall, in consultation with the Government of the United States, be appended to this Agreement as Agreed Minutes. The establishment of each trust in accordance with the applicable Agreed Minute is a condition to disbursement of Annual Proceeds by the Fund Manager to the respective distribution authorities.

Article III

Distribution Authority

Section 1 - Designated Distribution Authorities

The local government council for Bikini/Kili, Enewetak/Ujelang, Rongelap and Utrik shall be the distribution authority for the people of Bikini, Enewetak, Rongelap and Utrik, respectively. Each distribution authority shall, as set forth in this Agreement, receive and distribute, invest, or otherwise expend Annual Proceeds.

Section 2 - Additional Distribution Authorities

The Claims Tribunal may, from time to time, establish additional distribution authorities as it deems appropriate and necessary to carry out the intent of this Agreement.

Section 3 - Disbursements and Recordation

(a) Distribution, investment and other expenditure of Annual Proceeds by a distribution authority shall be made in accordance with customary law and traditional practice of the Marshall Islands, the Constitution of the Republic of the Marshall Islands, and this Agreement.

(b) A distribution authority may assign its right to receive sums provided under this Agreement, provided that the assignment is consistent with this Agreement and provided that the distribution authority indemnifies and holds harmless the Fund Manager, the Government of the Marshall Islands and the Government of the United States for any claims arising from the assignment.

(c) Each distribution authority shall, for purposes of notification to the public and all interested parties regarding its determination and actions, deposit with the Claims Tribunal an accounting of its annual disbursements, within 120 days after the end of each Marshall Islands fiscal year. Such accounting shall include a list of the names of all individuals receiving payments and the amounts received, and state the amounts disbursed for every other purpose.

Article IV

Claims Adjudication Process

In furtherance of the desire of the Government of the Marshall Islands to provide an additional long-term means for compensating claims resulting from the Nuclear Testing Program:

Section 1 - Establishment and Operation of the Claims Tribunal

(a) The Government of the Marshall Islands, prior to the first anniversary of the effective date of this Agreement, shall establish a Claims Tribunal, in accordance with its constitutional processes and this Agreement. The Claims Tribunal shall have jurisdiction to render final determination upon all claims past, present and future, of the Government, citizens and nationals of the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program, and disputes arising from distributions under Articles II and III of this Agreement. This section confers in the Claims Tribunal no jurisdiction over the United States, its agents, employees, contractors, citizens or nationals with respect to claims of the Government, citizens or nationals of the Marshall Islands arising out of the Nuclear Testing Program.

(b) In the exercise of its jurisdiction, the Claims Tribunal shall be independent of the legislative and executive powers of the Government of the Marshall Islands.

(c) The Claims Tribunal shall have power to issue writs and other processes, make rules and orders and promulgate other procedural regulations, not inconsistent with the laws of the Marshall Islands and this Agreement, as may be required. Such power shall include the authority to make orders for the attendance of witnesses with or without documents, and to make orders for the disposal of exhibits.

(d) Members of the Claims Tribunal shall be persons qualified by education, experience and character to discharge judicial office, shall hold office during good behavior for a set term of at least three years, and shall be appointed pursuant to procedures adopted by the Government of the Marshall Islands in accordance with its constitutional processes.

(e) A member of the Claims Tribunal may be removed from office only pursuant to procedures adopted by the Government of the Marshall Islands in accordance with its constitutional processes and only on the ground of clear failure or inability faithfully to discharge the duties of such office or for the commission of treason, bribery, or other high crimes or abuses inconsistent with the authority of his office.

(f) No member of the Claims Tribunal shall take part in the decision of a claim as to which he has a conflict of interest or the appearance of a conflict of interest.

(g) The compensation of a Claims Tribunal member shall not be changed during his term of office.

Section 2 - Awards and Costs of the Claims Adjudication Process

In making any award, the Claims Tribunal shall take into account the validity of the claim, any prior compensation made as a result of such claim and such other factors as it may deem appropriate. Costs of proceedings before the Claims Tribunal shall be a charge on Annual Proceeds, subject to determination of the Claims Tribunal, the laws of the Marshall Islands and distributions made under Sections 1 through 6 of Article II of this Agreement. Such costs shall also include the cost of defending the Fund.

Section 3 - Governing Law

In determining any legal issue, the Claims Tribunal may have reference to the laws of the Marshall Islands, including traditional law, to international law and, in the absence of domestic or international law, to the laws of the United States.

Article V

Tax Provisions

Section 1 - Exemption from United States Taxation

The sums provided for in Articles I and II of this Agreement, and any earnings derived therefrom, shall not be subject to any form of taxation by the United States or its political subdivisions to the extent that those sums and any earnings derived therefrom remain intact in an institution in the United States. Distribution of those sums and any earnings derived therefrom to individuals or other entities shall not be a transaction taxable by the Government of the United States, but, after distribution, the earnings of such distributed funds shall not be entitled to the tax exemption provided in this Section.

Section 2 - Exemption from Marshall Islands Taxation

The sums provided for in Articles I and II of this Agreement and any distribution of those sums shall not be subject to taxation by the Government of the Marshall Islands, but, after distribution to individuals or other entities, the earnings of such distributed funds shall not be entitled to the tax exemption provided in this Section.

Section 3 - Other Exemptions

The exemptions provided pursuant to Sections 1 and 2 of this Article are without prejudice to any exemptions otherwise applicable.

Article VI

Resettlement of Bikini Atoll and Conveyance of Property in respect to Bikini Atoll and Enewetak Atoll

Section 1 - Resettlement

The Government of the United States reaffirms its commitment to provide funds for the resettlement of Bikini Atoll by the people of Bikini at a time which cannot now be determined.

Section 2 - Bikini Sunken Vessels and Cable

Pursuant to Section 234 of the Compact, any rights, title and interest the Government of the United States may have to sunken vessels and cable situated in the Bikini lagoon as of the effective date of this Agreement is transferred to the Government of the Marshall Islands without reimbursement or transfer of funds. It is understood that unexpended ordnance and oil remains within the hulls of such sunken vessels, and that salvage or any other use of these vessels could be hazardous. By acceptance of such right, title and interest, the Government of the Marshall Islands shall hold harmless the Government of the United States from loss, damage and liability associated with such vessels, ordnance, oil and cable, including any loss, damage and liability that may result from salvage operations or other activity that the Government of the Marshall Islands or the people of Bikini take or cause to be taken concerning such vessels or cable. The Government of the Marshall Islands shall transfer, in accordance with its constitutional processes, title to such vessels and cable to the people of Bikini.

Section 3 - Enewetak Cable

Pursuant to Section 234 of the Compact, any right, title and interest the Government of the United States may have to cable situtated in the Enewetak lagoon as of the effective date of this Agreement shall vest in the Government of the Marshall Islands without reimbursement or transfer of funds. By acceptance of such right, title and interest, the Government of the Marshall Islands shall hold harmless the Government of the United States from loss, damage and liability associated with such cable and shall transfer, in accordance with its constitutional process, title to such cable to the people of Enewetak.

Article VII

Utilization of Lands

The Government of the United States is relieved of and has no responsibility for, and the Government of the Marshall Islands, consistent with its constitutional processes, shall have and exercise responsibility for, controlling the utilization of areas in the Marshall Islands affected by the Nuclear Testing Program. Assistance to the Government of the Marshall Islands from the Government of the United States in respect to the exercise of such responsibility by the Government of the Marshall Islands is set forth in full in this Agreement.

Article VIII

Northern Marshall Islands Radiological Survey

The Government of the United States has concluded that:

(a) The Northern Marshall Islands Radiological Survey and related environmental studies conducted by the Government of the United States represent the best effort of that Government accurately to evaluate and describe radiological conditions in the Marshall Islands; and

(b) The Northern Marshall Islands Radiological survey and related environmental studies have been made available to the Government of the Marshall Islands and can be used for the evaluation of the food chain and environment and estimating radiation-related health consequences of residing in the Northern Marshall Islands after 1978.

Article IX

Changed Circumstances

If loss or damage to property and person of the citizens of the Marshall Islands, resulting from the Nuclear Testing Program, arises or is discovered after the effective date of this Agreement, and such injuries were not and could not reasonably have been identified as of the effective date of this Agreement, and if such injuries render the provisions of this Agreement manifestly inadequate, the Government of the Marshall Islands may request that the Government of the United States provide for such injuries by submitting such a request to the Congress of the United States for its consideration. It is understood that this Article does not commit the Congress of the United States to authorize and appropriate funds.

Article X

Espousal

Section 1 - Full Settlement of All Claims

This Agreement constitutes the full settlement of all claims, past, present and future, of the Government, citizens and nationals of the Marshall Islands which are based upon, arise out of, or are in any way related to the Nuclear Testing Program, and which are against the United States, its agents, employees, contractors and citizens and nationals, and of all claims for equitable or any other relief in connection with such claims including any of those claims which may be pending or which may be filed in any court or other judicial or administrative forum, including the courts of the Marshall Islands and the courts of the United States and its political subdivisions.

Section 2 - Termination of Legal Proceedings

The Government of the Marshall Islands shall terminate any legal proceedings in the courts of the Marshall Islands against the United States, its agents, employees, contractors and citizens and nationals, involving claims of the Government, citizens and nationals of the Marshall Islands, arising out of the Nuclear Testing Program and shall nullify all attachments or any judgments attained relating to such proceedings.

Article XI

Indemnity

Subject to Article IX, and in consideration for the payment of the amounts set forth in this Agreement, the Government of the Marshall Islands, on behalf of itself and its citizens and nationals, shall indemnify and hold harmless the United States, its agents, employees, contractors and citizens and nationals, from all claims set forth in Article X of this Agreement, and all actions or proceedings which may hereafter be asserted or brought by or on behalf of the Government of the Marshall Islands, its citizens and nationals, in any court or other judicial forum based on, arising out of or in any way related to the Nuclear Testing Program. The amount of such indemnification shall not, in the aggregate, exceed $150 million, and the Government of the Marshall Islands shall use or cause the Fund, or other sums available to it, to be used as necessary to cover or satisfy the indemnification set forth in this Article.

Article XII

United States Courts

All claims described in Articles X and XI of this Agreement shall be terminated. No court of the United States shall have jurisdiction to entertain such claims, and any such claims pending in the courts of the United States shall be dismissed.

Article XIII

Administrative Provisions

Section 1 - Effective Date

This Agreement shall come into effect simultaneously with the Compact in accordance with Section 177 of the Compact.

Section 2 - Implementation

The Government of the Marshall Islands shall take all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement and the implementation of this Agreement in accordance with its terms.

Section 3 - Consultation

(a) The Government of the United States and the Government of the Marshall Islands shall consult at the request of either of them on matters relating to the provisions of this Agreement.

(b) The Government of the Marshall Islands may, from time to time, request from the Government of the United States assistance of an advisory nature with respect to the implementation of this Agreement, including the investment of the Fund in instruments of the Government of the United States and the establishment and operation of the Claims Tribunal. Such advisory assistance shall be provided in accordance with the provisions of Section 226 of the Compact.

Section 4 - Amendment

This Agreement may be amended at any time by mutual consent of the Government of the United States and the Government of the Marshall Islands.

Section 5 - Duration

This Agreement shall remain in full force and effect until terminated or otherwise amended by mutual consent.

Section 6 - Definitions

(a) The Definition of Terms set forth in Article VI of Title Four of the Compact is incorporated in this Agreement.

(b) The term "citizens and nationals" of the Marshall Islands or the United States, as the case may be, includes:

(1) a natural person who is a citizen of the Marshall Islands or the United States, and

(2) a corporation or other legal entity which is organized under the laws of the Marshall Islands or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico.

Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this agreement which shall come into effect in accordance with its terms between the Government of the United States and the Government of the Marshall Islands.

DONE at Majuro, Marshall Islands, this 25th day of June, one thousand, nine hundred eighty-three.

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA

- - - - -

FOR THE GOVERNMENT

OF

THE MARSHALL ISLANDS

Agreement Between
the Government of the United States and
the Government of the Marshall Islands for
the Implementation of Section 177 of the
Compact of Free Association

Appendix A

To benefit and assist the people of the Marshall Islands with respect to consequences of the Nuclear Testing Program, the Government of the United States has provided assistance pursuant to the following statutes:

U.S. Public Law

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AGREED MINUTES

Article II - Distribution of Annual Proceeds, People of Bikini: It is the understanding of the Government of the United States and the Government of the Marshall Islands that:

(a) The people of Bikini, acting through their local government council (the Bikini Distribution Authority), shall create the Bikini Claims Trust Fund (Bikini Fund), and shall appoint as trustee and manager of the Bikini Fund (Bikini Fund Manager) a United States investment manager with substantial experience in the administration of trusts and with funds under management in excess of $250 million. The Bikini Fund shall be invested in accordance with the guidelines set forth in Article I, Section 2(c) of this Agreement. The Bikini Fund shall provide for:

(1) invasion of corpus only in the event of an unforeseen natural disaster or other similar circumstance making it necessary to distribute corpus in order to prevent hardship to the people of Bikini;

(2) maximum invasion of three percent of corpus; and

(3) invasion of corpus no more frequently than once every three years.

(b) The Bikini Fund Manager shall be the designated recipient of the sums referred to in Article II, Section 2 of this Agreement.

(c) The Bikini Fund Manager shall distribute $600,000 of the quarterly amounts of $1.25 million set forth in Article II, Section 2 of this Agreement to the Bikini Distribution Authority, which shall disburse said sums in accordance with Articles II and III of this Agreement. The Bikini Fund Manager shall place the remaining $650,000 of such quarterly amounts in trust in the corpus of the Bikini Fund.

(d) The Bikini Fund Manager shall reinvest 65 to 85 percent of income earned by the Bikini Fund for the 15-year period commencing one calendar quarter after the first anniversary of the effective date of this Agreement, and shall reinvest 30 to 85 percent of income earned by the Bikini Fund for the period beginning one calendar quarter after the fifteenth anniversary of the effective date of this Agreement.

Article II - Distribution of Annual Proceeds, People of Enewetak: It is the understanding of the Government of the United States and the Government of the Marshall Islands that:

(a) The people of Enewetak, acting through their local government council (the Enewetak Distribution Authority), may elect to assign the payments specified in Article II, Section 3, of this Agreement to a financial institution in the United States in return for an equivalent sum representing the present value of such payments. For the purpose of this Agreed Minute, it is assumed that the equivalent sum payment will amount to $25 million or more. Such amount shall be distributed as follows:

(1) $10 million for the payment of claims arising out of the Nuclear Testing Program;

(2) $10 million from which the Enewetak Distribution Authority shall create the Enewetak Claims Trust Fund (Enewetak Fund), and shall appoint as trustee and manager of the Enewetak Fund (Enewetak Fund Manager) a United States investment manager with substantial experience in the administration of trusts and with funds under management in excess of $250 million. The Enewetak Fund shall be invested in accordance with the guidelines set forth in Article I, Section 2(c) of this Agreement. The Enewetak Fund Manager shall be the designated recipient of the sums referred to in Article II, Section 3 of this Agreement. Twenty to thirty percent of the income derived from the Enewetak Fund shall be added to the corpus of the Enewetak Fund each year, and the remainder distributed to those persons who are qualified, by traditional law and custom, to share in the payment for the claims arising out of the Nuclear Testing Program in accordance with a formula established by the Enewetak Distribution Authority consistent with this Agreement. The Enewetak Fund shall provide for:

i. invasion of corpus only in the event of an unforeseen natural disaster or other similar circumstance making it necessary to distribute corpus in order to prevent hardship to the people of Enewetak;

ii. maximum invasion of three percent of corpus; and

iii. invasion of corpus no more frequently than once every three years.

(3) $5 million to establish a trust, the income of which shall be used to continue the agricultural maintenance and food supplement programs now administered by the Government of the United States. The agricultural maintenance and food supplement trust shall continue until such time as the food supplement program is no longer necessary to ensure an adequate supply of food for the residents of Enewetak. In making this determination, the Enewetak Distribution Authority shall take into account the production of local foods, the availability of food from Ujelang, and the ability of members of the community to obtain imported foodstuffs. At that time, the Enewetak Distribution Authority may reduce or terminate the agricultural maintenance and food supplement program and use the principal and accumulated income for the payment of claims, as an addition to the Enewetak Fund, or for such other community purposes as the Enewetak Distribution Authority shall determine.

(b) In the event that the Enewetak Distribution Authority elects not to assign the payments for an equivalent sum payment as set forth in this Agreed Minute, then the payments provided for in Article II, Section 3 of this Agreement shall be paid to the people of Enewetak in the same manner, and invested and distributed in the same manner and in the same proportions, as the payments set forth in Article II, Section 2 of this Agreement.

Article II - Distribution of Annual Proceeds, People of Rongelap: (to be determined in consultation with the people of Rongelap in accordance with Section 8 of Article II of this Agreement).

Article II - Distribution of Annual Proceeds, People of Utrik: (to be determined in consultation with the people of Utrik in accordance with Section 8 of Article II of this Agreement).

Article II - Distribution of Annual Proceeds: All trusts created by the Distribution Authorities shall be established so as to provide a perpetual source of income for eligible recipients provided, however, that the creation of such trusts shall be consistent with the Rule Against Perpetuities.

Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association

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Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association

This Agreement sets forth the military use and operating rights of the Government of the United States in the Marshall Islands, and is concluded pursuant to Sections 321 and 323, Title Three of the Compact of Free Association (the Compact).

Article I

Definitions

The Definition of Terms set forth in Article VI of Title Four of the Compact and the Definitions set forth in paragraph 2 of Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact (the Status of Forces Agreement) are incorporated in this Agreement.

Article II

Applicability of Status of Forces Agreement

The provisions of the Status of Forces Agreement shall apply.

Article III

Provision of Defense Sites

The Government of the Marshall Islands shall provide to the Government of the United States the defense sites identified in Annex A to this Agreement. Specific arrangements for the establishment and use by the Government of the United States of defense sites in addition to those set forth in Annex A shall be in accordance with Section 321 of the Compact.

Article IV

General Military Use and Operating Rights

1. Consistent with Section 352 of the Compact, the Government of the United States has free access to and unrestricted control of the defense sites, including the right to control entry to and exit from any or all defense sites and the right to take necessary measures for their establishment, use and operation. The Government of the United States may take, within the defense sites and within the seabeds, water areas and air space adjacent to or in the vicinity of the defense sites, such measures as are necessary for the use, security and defense of the defense sites. These measures include the right:

(a) To maintain the defense sites and to construct structures and improvements thereon;

(b) To improve and deepen the harbors, channels, entrances, and anchorages, to dredge and fill and generally to fit the premises to their intended use;

(c) To control anchorages and moorings adjacent to or within the vicinity of the defense sites, and movements of ships and waterborne craft, to, from and within the defense sites;

(d) Subject to the provisions of paragraph 2 of Article V of this Agreement, to control aircraft operations to, from and within the defense sites and to control aircraft movement in the air space adjacent to or in the vicinity of the defense sites;

(e) To regulate and control all official communications of the Government of the United States and its contractors to, from and within the defense sites subject to the separate agreement between the Government of the United States and the Government of the Marshall Islands on communications referred to in Article III of Title One of the Compact;

(f) To prevent interference from any source whatsoever with all official communications of the Government of the United States and its contractors;

(g) To install, maintain, use and operate defense-related oceanographic, aeronautical, space communications, and other military or scientific systems and equipment; and

(h) To advise and assist, by means of visual and radio vectoring, safe passage of ships and aircraft through areas made hazardous by periodic missile and other test operations after, or concurrent with, notification to the Government of the Marshall Islands.

2. In conducting its activities in the defense sites, the Government of the United States shall use its best efforts to:

(a) Avoid interference with commercial activities including the exploitation of living and non-living resources of the sea;

(b) Avoid interference with navigation, aviation, communication and land or water travel in the Marshall Islands;

(c) Minimize damage to the terrain and to reef areas;

(d) Avoid harm to the environment, including water areas;

(e) Avoid activities which would adversely affect the well-being of the residents of the Marshall Islands; and

(f) Notify the Government of the Marshall Islands of non-routine activities so that the Government of the Marshall Islands may take steps to assist the Government of the United States in executing its responsibilities to minimize any adverse impact of such activities.

3. In order not to interfere with operation of the defense sites or pose safety hazards to individuals in the area, the Mid-Atoll Corridor area defined in Annex A, except for the islands of Meck, Eniwetak, Omelek, Gellinam, Gagan, Illeginni and Legan, is a closed area except when the Government of the United States announces that the Mid-Atoll Corridor area is temporarily open.

4. The Government of the United States may invite members of the armed forces of other countries to use defense sites pursuant to this Agreement, in conjunction with and under the control of the United States Armed Forces. Use by units of the armed forces of other countries of such defense sites, other than for transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval by the Government of the Marshall Islands.

5. The provisions of Section 173 of the Compact are incorporated by reference into, and become a part of, this Agreement. The Signatory Governments may, from time to time, consult regarding the implementation of this paragraph.

Article V

Shipping and Aviation

1. The Government of the United States may place or establish in the defense sites and the water areas adjacent thereto or in the vicinity thereof, lights and other fixed and floating aids to navigation of vessels and aircraft necessary for operations pursuant to this Agreement. The Government of the United States shall consult with the Government of the Marshall Islands on the position or characteristics of and any alterations to such aids to navigation.

2. Aircraft owned or operated by the Government of the Marshall Islands shall have access to and use of the airfield and related facilities located on the Kwajalein Island defense site, subject to United States military requirements. The Government of the United States shall give sympathetic consideration to requests by the Government of the Marshall Islands for access to and use of this airfield and related facilities by other aircraft. This access and use shall be subject to agreement between the Government of the United States and the Government of the Marshall Islands. Aircraft may also land at other defense sites with the prior consent of the Government of the United States.

Article VI

Law Enforcement

Regularly constituted military units of the Armed Forces of the United States and civilian security guards of the Armed Forces of the United States or security personnel under contract to the Government of the United States shall have the right to police the defense sites, and may take all appropriate measures to ensure the maintenance of law and order in the defense sites. United States military police or civilian security guards shall not be used outside the defense sites for law enforcement purposes, except as may be agreed with the Government of the Marshall Islands.

Article VII

Community Relations Council

The Government of the Marshall Islands and the Government of the United States shall each designate representatives to a Community Relations Council, the purpose of which will be to identify and consider all matters affecting relations between the defense sites and local Marshallese communities and to recommend actions as appropriate.

Article VIII

Employment of Labor

1. In the employment of local hire personnel the Armed Forces of the United States and United States contractors shall comply with laws of general applicability in the Marshall Islands regarding minimum wages, provided that such minimum wages do not exceed the minimum wage prevailing in the United States.

2. In the employment of local hire personnel, the Armed Forces of the United States and United States contractors shall provide equal pay for equal work.

3. The wages of local hire personnel who are in the employment of the Armed Forces of the United States or United States contractors as of the effective date of this Agreement shall not be reduced by reason of the cessation of the applicability of United States law in the Marshall Islands as of the effective date of the Compact.

4. The Government of the United States and the Government of the Marshall Islands shall consult with regard to the creation of training projects designed to provide for greater utilization of local hire personnel and to improve their job skills.

Article IX

Miscellaneous

1. All minerals, including oil, antiquities and treasure trove in a defense site and all rights relating thereto are reserved to the Government of the Marshall Islands, but any exploitation thereof shall require the prior concurrence of the Government of the United States.

2. Section 351 of the Compact as between the Government of the United States and the Government of the Marshall Islands is incorporated by reference into, and becomes a part of this Agreement. Unless otherwise provided, all issues or disputes that may arise under this Agreement which cannot be resolved locally shall be referred to the Joint Committee established by Section 351 and resolved in accordance with that Section.

3. The Government of the United States, pursuant to Section 234 of the Compact, transfers title to the Prinz Eugen, the former German warship now located in the Kwajalein Atoll area, to the Government of the Marshall Islands. It is understood that unexpended ordnance and oil remains within the hull of the Prinz Eugen, and that salvage or any other use of the ship could be hazardous. The Government of the Marshall Islands shall hold the Government of the United States harmless for any loss, damage or liability associated with the Prinz Eugen, including any loss, damage or liability that may result from any salvage operation or any other activity that the Government of the Marshall Islands takes or causes to be taken concerning the Prinz Eugen. Any such operation or activity undertaken by or on behalf of the Government of the Marshall Islands shall be conducted at a time and in a manner to be agreed to between the Government of the United States and the Government of the Marshall Islands so as not to interfere with the operation of the defense sites.

4. Consistent with the laws and regulations of the United States, and to the extent that emergency medical services can be made available, the Government of the United States at its Kwajalein Island defense site contractor-operated medical facility shall undertake to provide such emergency services to citizens and nationals of the Marshall Islands on a reimbursable basis under terms and conditions agreed upon between the Signatory Governments.

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Article X

Economic Assistance, Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact.

2. This Agreement may be amended or terminated at any time by mutual consent.

3. This Agreement shall remain in effect for an initial term of fifteen years. The Government of the United States shall have the right to extend this Agreement for fifteen additional years beyond the initial term.

a. For this extension, the Government of the United States shall provide to the Government of the Marshall Islands, on a grant basis, the sum of $2.5 million after the fifteenth anniversary and prior to the sixteenth anniversary of the effective date of this Agreement. This payment shall be made whether or not the Government of the United States elects to exercise this option and is an obligation which is not subject to termination.

b. Not later than the thirteenth anniversary of the effective date of this Agreement, the Government of the United States shall elect whether to exercise this extension. Such election shall be made in writing to the Government of the Marshall Islands.

4. If the Government of the United States elects to exercise the extension set forth in paragraph 3 of this Article, the Government of the United States shall provide to the Government of the Marshall Islands an annual grant payment, commencing on the fifteenth anniversary of the effective date of this Agreement and continuing for each subsequent year that this Agreement remains in effect. This annual payment is to be made as follows:

a. In reaffirmation of its continuing interest in promoting the long-term economic advancement and self-sufficiency of all the people of the Marshall Islands, the amount of $7.1 million adjusted in accordance with the formula specified in Section 217 of the Compact.

b. A fixed amount of $1.9 million.

c. If the additional two-year period of negotiation contemplated pursuant to Section 231 of the Compact is in effect between the fifteenth and seventeenth anniversaries of the effective date of this Agreement, the annual payments specified in paragraphs 4(a) and 4(b) shall not be paid, in order that the payments otherwise made in accordance with Section 231 of the Compact shall not be duplicated.

5. The Government of the United States may terminate this Agreement upon the date of expiration of the initial term of this Agreement.

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6. In addition to the provisions of paragraph 5 of this Article, the Government of the United States may terminate this Agreement at any other time during the extension period by giving written notice, not later than two years prior to the date it intends to terminate, of its intention to terminate. Upon termination pursuant to this paragraph, the Government of the United States shall make a termination payment to the Government of the Marshall Islands which shall be computed by multiplying, by a factor of two, the payment due the Government of the Marshall Islands pursuant to paragraph 4(a) and 4(b) of this Article the year that termination is to take effect. Such termination payment shall be in addition to the annual payment made during the year of termination. If this Agreement is terminated pursuant to paragraph 5 of this Article, no termination payment shall be made.

7. The assistance the Government of the United States provides the Government of the Marshall Islands pursuant to this Agreement is to ameliorate any adverse impact on economic and social conditions throughout the Marshall Islands of the activities of the Government of the United States in the area of the defense sites. The Government of the Marshall Islands shall initiate projects utilizing the funds provided under paragraph 4(b) of this Article to this end.

a. The Government of the Marshall Islands shall consult with the Government of the United States on the status of these projects.

b. After consultation, the Government of the United States shall provide such technical and planning assistance to the Government of the Marshall Islands in its implementation of such projects as is mutually agreed.

8. Pursuant to Sections 224 and 226 of the Compact the Government of the United States shall, during the initial term of this Agreement, work closely with the Government of the Marshall Islands in developing plans and programs to reduce any adverse social and economic impact of United States defense activities in the Marshall Islands, and will seek to provide, within existing resources, technical assistance required for the implementation of these plans and programs. In addition, the United States is prepared to seek, on a matching basis to be determined by mutual agreement, priority funding to ameliorate any adverse impact caused by changes in defense programs.

9. The Government of the United States and the Government of the Marshall Islands may from time to time enter into contractual arrangements pursuant to Section 323 of the Compact. Such arrangements may include reimbursable services provided by the Government of the United States to the Government of the Marshall Islands. The Armed Forces of the United States may furnish such services provided that payment for reimbursable services is made in accordance with the terms of such contractual arrangements.

IN WITNESS WHEREOF, the undersigned, duly authorized for the purposes, have signed the present agreement.

DONE at WASHINGTON, D.C., in duplicate, this 24th day of MAY, one thousand nine hundred eighty-two.

FOR THE GOVERNMENT OF THE UNITED STATES:

FOR THE GOVERNMENT OF THE MARSHALL ISLANDS:

June 25

June 25 1983

Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association

AGREED MINUTES

Article IX, Miscellaneous paragraph 1: It is the understanding of the Government of the United States and the Government of the Marshall Islands that paragraph 1 of Article IX of this Agreement shall be implemented in a manner consistent with the Constitution of the Marshall Islands and shall not be interpreted as impairing, limiting or altering any rights or interests in mineral rights, or the benefits derived from exploitation thereof, as established by or arising under the Marshall Islands Constitution.

Article X, Economic Assistance, Effective Date and Duration, paragraph 9: It is the understanding of the Signatory Governments that contractual arrangements for provision of reimbursable services pursuant to paragraph 9 of Article X of this Agreement may include, in addition to services, provision of such supplies and equipment, on a reimbursable basis, as may be mutually agreed. The Government of the United States and the Government of the Marshall Islands shall consult prior to the effective date of this Agreement with regard to the continuation of services being provided by the Department of Defense to the Government of the Marshall Islands or the inhabitants of Kwajalein Atoll, including provision of office space and accommodations for persons on official business of the Government of the Marshall Islands.

Article IV, General Military Use and Operating Rights, paragraph 3: Except for Meck, Illeginni, Gagan and Legan, the islands of the Mid-Atoll Corridor shall be open to visitation during three six-week periods each calendar year. Notice of these periods shall be given to the Government of the Republic of the Marshall Islands in a timely manner. The Commander, Kwajalein Missile Range shall designate these periods, and shall establish the basis for visitation to Omelek, Gellinam and Eniwetak Islands. This basis shall include temporary habitation by up to 19 persons on Omelek, who can fish from Gellinam and Eniwetak. Consistent with United States activities, on Eniwetak, the Commander, Kwajalein Missile Range shall allow temporary habitation on that islands as well. The Signatory Governments may, from time-to-time, consult regarding such modifications to visitation arrangements as may be mutually agreed.

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Annex A

Defense Sites Provided by the Government of the Marshall Islands Pursuant to Article III

1. The Government of the Marshall Islands shall provide to the United States the following land areas. The Government of the United States may, upon request of the Government of the Marshall Islands, grant limited access to these areas.

(a) Outside Mid-Atoll Corridor

Island	Approximate Acreage
Kwajalein	748 (Includes 205 acres landfill constructed by U.S. Government)
Roi-Namur	398 (Includes 40 acres landfill constructed by U.S. Government)
Ennugarret	6 (of 24 total acres)
Ennylabegan	71 (of 124 total acres)

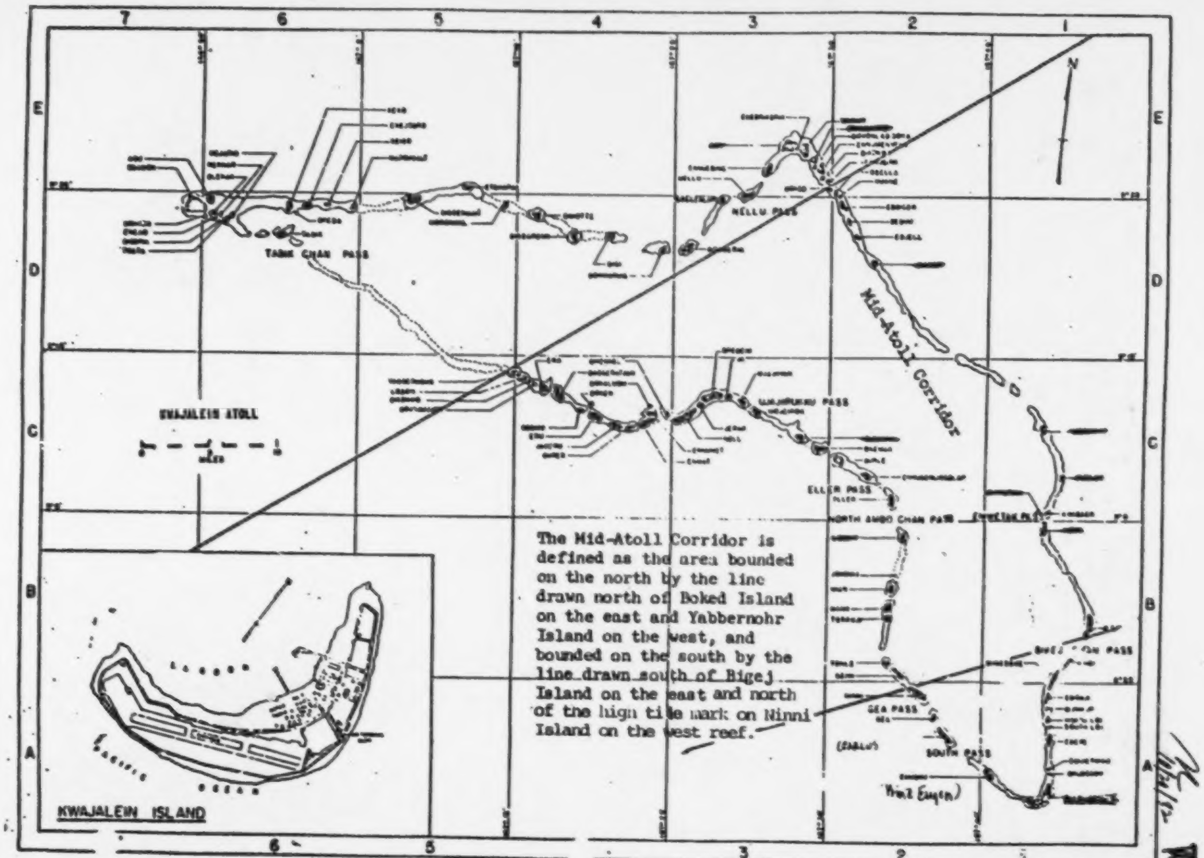
(b) Within the Mid-Atoll Corridor

Island	Approximate Acreage
Meck	55 (Includes 18 acres landfill constructed by U.S. Government)
Eniwetak	15
Omelek	8
Gellinam	5
Gagan	6
Illeginni	31
Legan	18

2. The Government of the United States shall have control of entry and movement of personnel within the Mid-Atoll Corridor Area of the Kwajalein Atoll.

(a) The Mid-Atoll Corridor is defined as the area within the Kwajalein Atoll bounded on the north by a line drawn north of Boked Island on the east reef and Yabbernohr Island on the west reef and bounded on the south by the line drawn south of Bigej Island on the east reef and north of the high tide mark on Ninni Island on the west reef. A map of the area is attached as Annex B.

(b) The boundary lines, as stated above and as set out in the map attached as Annex B, shall be redrawn when the Government of the United States determines that the area needed for the safe operation of the defense sites can be reduced from that currently utilized. If the boundary lines are redrawn, the islands then outside the Mid-Atoll Corridor area, except those islands listed in paragraph 1 of this Annex, shall be relinquished.


KWAJALEIN ATOLL
MILES
KWAJALEIN ISLAND
Mid-Atoll Corridor
TANK CHAN PASS
NELLU PASS
ELLER PASS
NORTH AMBO CHAN PASS
SEA PASS
SOUTH PASS
Prinz Eugen)
N
1
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The Mid-Atoll Corridor is defined as the area bounded on the north by the line drawn north of Boked Island on the east and Yabbernohr Island on the west, and bounded on the south by the line drawn south of Bigej Island on the east and north of the high tide mark on Ninni Island on the west reef.

Annex B

Agreement Between
The Government of the United States
and
The Government of the Marshall Islands
Regarding Mutual Security
Concluded Pursuant to Sections 321 and 323 of
The Compact of Free Association

PREAMBLE

The Government of the United States and the Government of the Marshall Islands:

Reaffirming their desire to live in peace with all peoples and all governments and their desire to strengthen and support the cause of peace in the Pacific area;

Desiring to declare publicly and formally their common purpose, so that no potential aggressor can assume that either of them stands alone in the Pacific area;

Mindful that the Government of the United States and the Government of the Marshall Islands, in the exercise of their respective capacities for the conduct of foreign affairs, have entered and do enter into agreements which are implemented in accordance with their respective constitutional processes; and

Reaffirming the purposes and principles of the Compact of Free Association;

NOW THEREFORE AGREE:

ARTICLE I

The Government of the United States and the Government of the Marshall Islands rededicate themselves to the principle that any international disputes in which they may be involved shall be settled by peaceful means and in such a manner that international peace, security and justice are not endangered.

ARTICLE II

The Government of the United States and the Government of the Marshall Islands shall consult at the request of either Government, whenever the political independence of either of them or their mutual security is threatened in the Pacific.

ARTICLE III

The government of the United States and the Government of the Marshall Islands recognize that, in view of the special relationship between their peoples, any attack on the Marshall Islands would constitute a threat to the peace and security of the Pacific area and a danger to the United States. In the event of such an attack or the threat thereof, the Government of the United States would take action to meet the danger to the United States and the Marshall Islands in accordance with its constitutional processes.

ARTICLE IV

a. If the Government of the United States determines that any third country seeks access to or use of the Marshall Islands by military personnel or for military purposes, the Government of the United States has the authority and responsibility to foreclose such access or use, except in instances where, following the consultations referred to in paragraph b. of this Article, the two governments otherwise agree. The Government of the United States shall exercise such authority and responsibility in accordance with its constitutional processes.

b. The Government of the Marshall Islands, in recognition of the obligations undertaken by the Government of the United States in this Article and in Article III of this Agreement, shall consult with the Government of the United States in the event a third country seeks such access or use.

ARTICLE V

The Government of the United States and the Government of the Marshall Islands recognize that sustained economic advancement is a necessary contributing element to the attainment of the mutual security goals expressed in this Agreement. The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of the Marshall Islands.

ARTICLE VI

In order to give effect to their undertakings in this Agreement entered into pursuant to Sections 321, 323 and 454 of the Compact of Free Association:

a. The Government of the Marshall Islands recognizes that this Agreement contains international treaty obligations which shall be implemented in a manner consistent with the Constitution of the Marshall Islands; and

b. The Government of the United States recognizes that this Agreement is an Executive Agreement of the United States and shall execute it in accordance with its constitutional processes.

ARTICLE VII

This Agreement shall come into effect upon the expiration or termination of Title Three of the Compact of Free Association.

ARTICLE VIII

This Agreement shall remain in full force and effect until terminated or otherwise amended by mutual consent.

ARTICLE IX

The Definition of Terms set forth in Article VI of Title Four of the Compact are incorporated in this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized for the purpose, have signed the present agreement.

DONE at WASHINGTON, DC., in duplicate, this 24TH, day of MAY, nineteen hundred and eighty-two.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE MARSHALL ISLANDS:

Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 227, 321 and 323 of the Compact of Free Association

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Annex A.........The United States Coast Guard Sites

Annex B.........Military Civic Action Teams

ii

Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 227, 321 and 323 of the Compact of Free Association

This Agreement sets forth:

(a) The conditions under which the Government of the United States shall make available the services of Military Civic Action Teams to the Government of the Federated States of Micronesia pursuant to Section 227, Title Two, of the Compact of Free Association (the Compact); and

(b) The military use and operating rights of the Government of the United States in the Federated States of Micronesia pursuant to Sections 321 and 323, Title Three, of the Compact.

Article I

Definitions

1. The Definition of Terms set forth in Article VI of Title Four of the Compact and the Definitions set forth in paragraph 2 of Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact (the Status of Forces Agreement) are incorporated in this Agreement.

2. For the purpose of this Agreement only, the following terms shall have the following meanings:

(a) "Civic Action Team (CAT)" -- is a unit consisting of members of the force which is specifically organized to undertake civic action and community development projects.

(b) "CAT Base Camp" -- is a "defense site" as set forth in paragraph 2(f) of Article I of the Status of Forces Agreement. A CAT work site, however, is not a "defense site".

Article II

Applicability of Status of Forces Agreement

The provisions of the Status of Forces Agreement shall apply.

Article III

Provision of Defense Sites

1. The Government of the Federated States of Micronesia shall provide to the Government of the United States the defense sites identified in Annexes A and B to this Agreement.

(a) The provision of defense sites shall include all the necessary land and use rights for such sites, rights of access thereto, and road, pipeline and powerline easements as may be required.

(b) Any rent or other use charges or other consideration to owners of the lands in the defense sites shall be as provided in this Agreement. Such payments shall be made by the Government of the United States to the Government of the Federated States of Micronesia on behalf of its citizens.

(c) In consideration of the use of the defense sites identified in Annex A to this Agreement, the Government of the United States shall provide the sum specified in Section 213(c) of the Compact.

2. Specific arrangements for establishment and use by the Government of the United States of defense sites in addition to those set forth in Annexes A and B to this Agreement shall be between the Governments of the United States and the Federated States of Micronesia in accordance with Section 321 of the Compact.

3. The Government of the United States affirms that it has no present need for or present intention to seek the use of defense sites other than those identified in Annexes A and B of this Agreement.

4. The Government of the United States shall notify the Government of the Federated States of Micronesia when it no longer has a requirement to retain any of the defense sites, or portions thereof, designated in this Agreement. Such defense sites, or portions thereof, shall then revert to the full and complete control of the Government of the Federated States of Micronesia for disposition to their lawful owners as determined by the Government of the Federated States of Micronesia in accordance with its constitutional processes.

Article IV

General Military Use and Operating Rights

1. Consistent with Section 352 of the Compact, the Government of the United States has free access to and unrestricted control of the defense sites, including the right to control entry to and exit from any or all defense sites and the right to take necessary measures for their establishment, use and operation. The Government of the United States may take, within the defense sites and within the seabeds, water areas and air space adjacent to or in the vicinity of the defense sites, such measures as are necessary for their use, security and defense. These measures include the right:

(a) To maintain the defense sites and to construct structures and improvements thereon;

(b) To improve and deepen the harbors, channels, entrances, and anchorages, to dredge and fill, and generally to fit the premises to their intended use;

(c) To control anchorages and moorings, the movements of ships and waterborne craft, aircraft operations and land movements;

(d) To regulate and control all communications of the Government of the United States to, from and within the defense sites; and

(e) To install, maintain, use and operate defense-related oceanographic, aeronautical, space communications, and other military or scientific systems and equipment.

2. In conducting activities pursuant to paragraph 1 of this Article, the Government of the United States shall use its best efforts to:

(a) Avoid interference with commercial activities in the Federated States of Micronesia;

(b) Avoid interference with access by fishermen to shoreline areas;

(c) Avoid interference with navigation, aviation, communication and land or water travel in the Federated States of Micronesia;

(d) Avoid impeding access to recreational areas, particularly beach areas, by residents of and visitors to the Federated States of Micronesia;

(e) Minimize damage to the terrain and to reef areas;

(f) Avoid harm to the environment, including water areas;

(g) Avoid activities which would adversely affect the well-being of the residents of the Federated States of Micronesia; and

(h) Notify the Government of the Federated States of Micronesia of non-routine activities so that the Government of the Federated States of Micronesia may take steps to assist the Government of the United States in executing its responsibilities to minimize any adverse impact of such activities.

Article V

Aids to Navigation

The Government of the United States shall place or establish and maintain in the defense sites and the water areas adjacent thereto or in the vicinity thereof, lights and other fixed and floating aids to navigation of vessels and aircraft necessary for operations pursuant to this Agreement. The Government of the United States shall consult with the Government of the Federated States of Micronesia on the position or characteristics of and any alterations to such aids to navigation.

Article VI

Community Relations Council

The Government of the United States and the Government of the Federated States of Micronesia may each designate representatives to a Community Relations Council whose purpose will be to identify and consider all matters affecting relations between the Defense Site Commander and local Federated States of Micronesia communities and to recommend actions as appropriate.

Article VII

Miscellaneous

1. No proprietary rights to minerals, including oil, antiquities and treasure trove in a defense site, nor rights relating thereto pass to the Government of the United States by virtue of this agreement but any exploitation thereof shall require the prior concurrence of the Government of the United States.

2. Unless otherwise provided, all issues or disputes that may arise under this Agreement which cannot be resolved locally shall be referred for resolution to the Joint Committee established pursuant to Section 351 of the Compact.

3. In the event of an emergency the Government of the United States, consistent with military requirements, shall make available to the Government of the Federated States of Micronesia, on a cost-reimburseable basis, military fuels and oils.

4. The Government of the United States may station in the Federated States of Micronesia United States personnel required in its use of the defense sites authorized under this Agreement. Except for United States personnel stationed in the Federated States of Micronesia pursuant to this Agreement, or limited numbers of United States personnel in the Federated States of Micronesia on official duty in connection with naval port visits, aircraft transits or other temporary duty, the Government of the United States shall not establish in the Federated States of Micronesia a formal rest, relaxation or recuperation program, without the consent of the Government of the Federated States of Micronesia.

5. The Government of the United States shall not use nuclear power plants or reactors in the Federated States of Micronesia, except on military ships and vessels under the ownership or control of the Government of the United States.

6. The waste disposal area located on the Defense Site identified in Annex A shall be closed in accordance with the provisions of Article X, paragraph 2 of the Status of Forces Agreement.

7. Consistent with Article V, paragraph 7 of the Status of Forces Agreement and Article II of this Agreement, the Designated Representatives of the Signatory Governments shall enter into agreed arrangements regarding notice and taxation of major transfers of personal property by United States personnel to non-tax exempt persons in the Federated States of Micronesia.

Article VIII

Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact.

2. This Agreement may be amended at any time by the mutual consent of the Government of the Federated States of Micronesia and the Government of the United States.

3. Except as specified in paragraph 4 below, this Agreement shall remain in full force and effect for an initial term of 15 years and thereafter as mutually agreed.

4. Article III, paragraph 1(c) and Annex A of this Agreement shall:

(a) remain in full force and effect until the end of calendar year 1992; and

(b) be extended thereafter by mutual agreement.

5. If the Government of the United States should decide to vacate the defense site identified in Annex A to this Agreement prior to December 31, 1992, the Government of the United States will notify the Government of the Federated States of Micronesia of its decision at least 12 months in advance of such vacation date.

6. If the Government of the United States determines that it will have a need for the use of the defense sites identified in Annex A of this Agreement beyond December 31, 1992, the Government of the United States will notify the Government of the Federated States of Micronesia of its determination at least 12 months in advance of such date.

Annex A

The United States Coast Guard Sites

This Annex identifies the defense sites for use by the United States Coast Guard on Yap in the Federated States of Micronesia. The Governments of the United States and the Federated States of Micronesia assume no responsibility for any Government-to-Government agreements, entered into prior to the effective date of this Agreement, concerning said sites, written or otherwise, except for those agreements in Appendices 3 and 4 to this Annex, which become a part of this Agreement. The United States Coast Guard sites are as follows:

1. Exclusive-use areas - areas which are reserved exclusively for use by the Government of the United States:

a. Parcel 1 -- Loran Station: The exclusive-use of lands herein more particularly described as follows:

Beginning at concrete marker 'A' which bears 90°-47'-11" true and 1782.82 feet from C-ANT which is a Coast Guard bronze disk set on top of a 2 inch O.D. galvanized pipe that is 14 inches above the natural ground;

Thence: 336°-55'-00", 1419.42 feet to concrete marker 'B',
Thence: 291°-43'-00", 2771.64 feet to concrete marker 'C',
Thence: 223°-39'-00", 2006.13 feet to concrete marker 'D',
Thence: 127°-30'-00", 3565.67 feet to concrete marker 'E',
Thence: 052°-35'-00", 2124.47 feet to concrete marker 'A',

which is the true point of beginning, comprising an area of 205.227 acres more or less, on the island of Gagil-Tomil, Yap State, Federated States of Micronesia. Azimuths are based on true bearing of C-ANT to W-4 being 060°-53'-00", as established by U.S. Coast Guard Survey of 2-2-63. A representative map is attached as Appendix 1. A more definitive representation may be substituted in the future if necessary.

b. Parcel 2 -- Fuel Pipe Line:

(1) An easement and right of way including the right to enter at any time that it may see fit, for the folowing purposes, namely:

(a) To construct, maintain, rebuild, repair, operate, remove and inspect undergound and aboveground pipelines, mains, and pumps for the purpose of conveying gasoline, oil and other petroleum products, on, over, across and through said lands, said pipeline to be located as shown in Appendix 1;

(b) To pass and repass, with full and free right and liberty at all times, with or without vehicles, for any purpose whatsoever, on, over, across, and through said lands; and

(c) To remove trees, bushes, undergrowth, buildings, fire hazards and other obstructions interfering with full use and enjoyment of the rights granted above.

(2) Said easement and right of way covering a strip of land thirty-four feet wide, more or less, through those lands located in Tomil and Gagil, Yap State, herein more particularly described as follows:

Being all those portions of land in the vicinity of the road going from the Loran Station property to the Tomil road intersection, thence going south to the Tomilang School intersection, thence going west to the Tomil Harbor shore, and known as Wichigral, Maawech, and Bilewachgey in Gagil Municipality, and Bilewachgey, Teldou, Gacham, Liyeg, Matheno, Tamilal, Tagil Pirun'uw, Dachiyio'r, Dadoochoch, Fubuy, Fubuyub, Tariya', Damachbuw', Peep'uw, Danag, Paat'nuy, Yey, Torrolul, Belegurgur, Gubor, Ge'mem, Gilang, Werme, Tagayel, Giring, Tabnifiy, Michfith, Rifin, Magif, Pangalif, Falang, Laly, Tablau, Tablag, Pannger, Mo'ur'r, Lanmoot', Tawoyang and Daken-e-do' in Tomil Municipality, containing an area of 14.25 acres, more or less, and described more fully by metes and bounds as shown on Yap District Map No. Y-LTROW-1, Sheets 1 though 6, dated February 7, 1968, and filed in the Office of the Clerk of Courts, Yap District, on February 9, 1968. A representative map is attached as Appendix 2. A more definitive representation may be substituted in the future if necessary. The Government of the United States agrees to maintain fuel pipelines so as to minimize the possibility of fuel spills. Structures crossing the pipeline must be approved by the Government of the United States and the Government of the Federated States of Micronesia. The Government of the Federated States of Micronesia shall indemnify the Government of the United States for any damages to the pipeline caused by crossing structures; furthermore, the Government of the United States shall be held harmless for any damages or injuries proximately caused by these structures.

2. Joint-use areas - areas which may be used jointly by the Government of the Federated States of Micronesia and the Government of the United States:

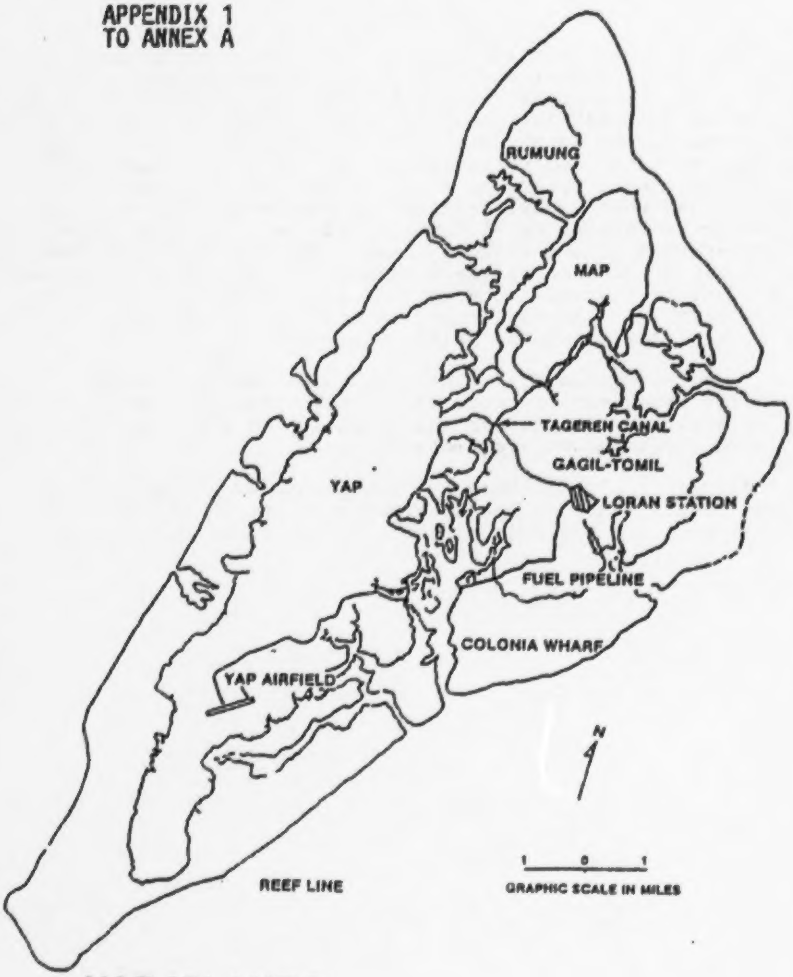
. . . . .

a. Parcel 3 -- roads and bridge: The joint use of said roads beginning at Tomil Harbor and ending at the Colonia road junction, as shown on the representative map attached as Appendix 2. In consideration of the past assistance rendered by the Government of the United States in the construction and maintenance of the bridge across Tageran Canal and roads within Yap State, the Federated States of Micronesia agrees to maintain and keep in good repair said bridge and roads. Maintenance and repair by the Government of the Federated States of Micronesia will be at no cost or expense to the Government of the United States. The Government of the Federated States of Micronesia shall maintain a 24 foot wide roadway and shall ensure the existence but not the maintenance of a 10 foot wide right of way appurtenant to the roadway, 5 feet on either side of the presently existing pipeline.

b. Parcel 4 -- Yap Airfield: The joint use of the Yap airfield for those requirements of the Government of the United States associated with the use and operation of the Coast Guard sites including telecommunications purposes.

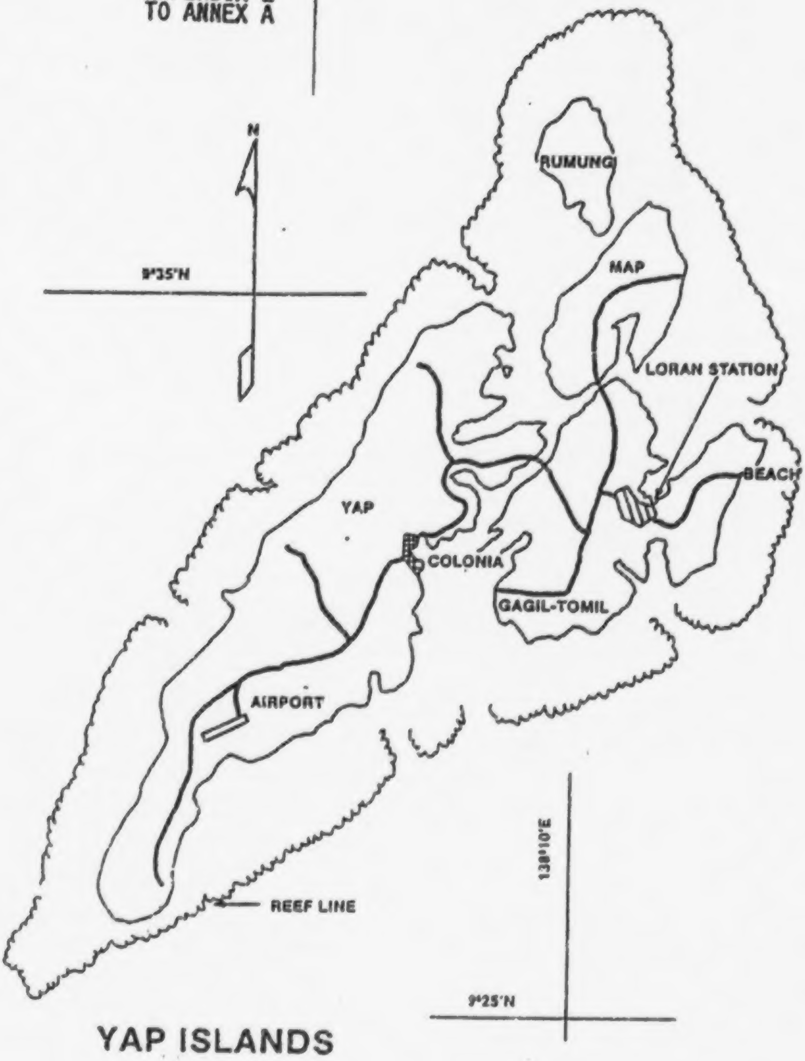
c. Parcel 5 -- Tomil Harbor: The joint use of Tomil harbor for those requirements of the Government of the United States associated with the use and operation of the Coast Guard sites.

APPENDIX 1
TO ANNEX A


RUMUNG
MAP
YAP
TAGEREN CANAL
GAGIL-TOMIL
LORAN STATION
FUEL PIPELINE
COLONIA WHARF
YAP AIRFIELD
REEF LINE
N
1 0 1
GRAPHIC SCALE IN MILES

YAP ISLANDS

APPENDIX 2
TO ANNEX A


N
9°35'N
RUMUNG
MAP
LORAN STATION
BEACH
YAP
COLONIA
GAGIL-TOMIL
AIRPORT
REEF LINE
138°10'E
9°25'N

YAP ISLANDS

REVOCABLE LICENSE TO THE FEDERATED STATES OF MICRONESIA AND THE YAP STATE GOVERNMENT FOR USE OF PROPERTY AT COLONIA, YAP

License #14-CG-57-79(Rev.1)

WHEREAS, this agreement is made and entered into by and between the United States of America, on behalf of the United States Coast Guard, acting by and through the Commander, Fourteenth Coast Guard District, 300 Ala Moana, Honolulu, Hawaii 96850 (hereinafter called the Licensor), and the Federated States of Micronesia and the Yap State Government, (hereinafter called the Licensees); and

WHEREAS, the Licensees have requested permission to continue to mount a 23 foot fiberglass whip antenna, 5.8 DB omnidirectional, mounting clamps and jacketed foam cable with connectors on the Licensor's beacon tower in Colonia, Yap; and

WHEREAS, the granting of this license will be to the benefit and advantage of the Licensor and will not injure the interests of the Licensor;

NOW, THEREFORE, pursuant to the authority contained in Section 93 (o) of Title 14, United States Code, a Revocable License is hereby granted for the mounting of the antenna on the 39 foot high white skeleton tower located on the southeast slope of Mount Matade, Colonia, Yap, subject to the following terms and conditions:

A. That the terms of this license shall be five (5) years from the date of execution, renewable for an additional five (5) year period at the option of the Licensor and, if requested, by the Licensees.

B. No substantial alteration of existing premises or facilities, or construction of permanent type improvements shall be made, and further, any item of long-term maintenance, or any additions to, or alterations of, the premises or facilities which the Licensees feel necessary or desirable in connection with their use and occupancy shall be made only with the prior approval and consent of the Licensor, at the sole cost and expense of the Licensees and within the terms of this license. Upon revocation, expiration or surrender of this license , and to the extent directed by the Licensor, the Licensees shall remove all alterations, additions, betterments, and improvements made, or installed and restore the premises or facilities to the same or as good condition as existing prior to the use by the Licensees, reasonable wear and tear excepted.

C. In the event that death or injury occurs to any person, or loss, destruction or damage occurs to any property of the Licensees, their agents or employees, or any third person in connection with the installation, maintenance, repair or use of the antenna, occasioned in whole or in part by the acts or omissions of the Licensees, the Licensees shall assume all liability therefore and will immediately indemnify and save harmless the United States Coast Guard, its officers, agents or employees from any liability arising as aforesaid.

D. It is a condition of this license that no person shall, on the ground of race, color or national origin, be excluded from participation in, or denied the benefits of, or be otherwise subjected to discrimination in the use of the facility. The United States Coast Guard reserves the right to revoke and cancel this license in the event of breach of such nondiscrimination condition during the period of the license.

E. This license is revocable by the Licensor upon thirty days written notice to the Licensees at the below referenced addresses, and by the Licensees upon thirty days written notice by one of them to the Licensor.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this 1st day of October, 1982.

FEDERATED STATES OF MICRONESIA

By

Secretary of External Affairs
Official Title

Ponape, Caroline Islands 96941
Address

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD

Bernie E Thompson
By

Commander,
Fourteenth Coast Guard District
Official Title

300 Ala Moana
Honolulu, Hawaii 96850
Address

YAP STATE GOVERNMENT

By

Governor
Official Title

Yap, Caroline Islands
Address

Appendix 4 to Annex A pg. 1

LICENSE TO THE FEDERATED STATES OF MICRONESIA AND THE YAP STATE GOVERNMENT FOR USE OF REAL PROPERTY AT GAGIL-TOMIL, YAP

License #DT CG-271114-82-RP-028L

WHEREAS, this License is made and entered into by and between the United States of America, on behalf of the United States Coast Guard, acting by and through the Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, Hawaii 96850 (hereinafter called the Licensor) and the Federated States of Micronesia and the Yap State Government (hereinafter called the Licensees); and

WHEREAS, with the knowledge and consent of the Coast Guard, the Licensees have drilled a water well on the perimeter boundary of the Coast Guard Loran Station property at Gagil-Tomil Island, Yap, which well has been determined to be suitable for supplying water to the residents of Yap; and

WHEREAS, the Licensees desire to obtain permission to operate said water well, and the Licensor is willing to grant a license for such use, and is so authorized by Title 14 United States Code, Section 93;

NOW, THEREFORE, for and in consideration of the mutual convenants and promises hereinafter set forth and the mutual benefits to be derived therefrom, the Licensor and the Licensees agree as follows:

ARTICLE 1. GRANT OF LICENSE

The Licensor hereby grants to the Licensees and the Licensees hereby accept from the Licensor, a license to use and occupy all that real property located within the Coast Guard Loran Station property, known as "Parcel 1," Gagil-Tomil Island, Yap, Federated States of Micronesia, as shown on Exhibit A attached hereto and made a part hereof, hereinafter referred to as the "Premises."

The Licensor further grants to the Licensees the right to use the existing roads, streets, paths and rights of way within said "Parcel 1," as may be necessary for the Licensees to have ingress to and egress from the Premises.

ARTICLE 2. TERM

TO HAVE AND TO HOLD said License for an indefinite period of time commencing on the date of the signing of this License.

ARTICLE 3. PURPOSE

The Premises are licensed to the Licensees and may be used only for the development, installation, operation, maintenance, and repair of a water well, water storage tanks, and facilities and equipment incident thereto.

ARTICLE 4. ASSIGNMENT

The Licensees may assign all or any part of its interests in this License on terms and conditions consistent with this License.

ARTICLE 5. MAINTENANCE AND REPAIR

The Licensees shall safeguard the Premises, including all improvements thereon, against destruction, impairment, and loss and, at their sole expense, maintain said Premises in good repair and condition and be responsible for any loss or damage thereto, except those resulting from ordinary wear and tear and conditions beyond the control of the Licensees.

ARTICLE 6. SANITARY LAND FILL

It is hereby recognized by the parties hereto that the United States operates and will continue to operate a sanitary land fill in the immediate vicinity of the Premises, which land fill operation could (a) cause the underground water in the vicinity of the Premises to become contaminated or otherwise unsuitable for consumption without treatment, or (b) interfere with or increase the costs of operation of the water well authorized under this License. The Licensees agree that their use of the Premises under this License shall not result in increased costs to the Licensor for the operation of the aforesaid sanitary land fill. Additionally, the Licensees do hereby specifically release, remise and forever discharge the United States, it officers, agents, servants, and employees of and from all manner of actions, claims or demands, the Licensees ever had, now has, or ever will have upon or by any matter, cause or thing whatsoever arising out of the Licensees use of the Premises or the United States' past, present, or future operation of a sanitary land fill in the immediate vicinity of the Premises.

ARTICLE 7. NO EXPENSE TO THE UNITED STATES

The Licensees understand that the use and occupancy granted by this License will be at no cost or expense to the United States nor will it generate or result in any requirement for funding by the United States.

ARTICLE 8. DAMAGE AND INJURY

The Licensees shall be responsible for any damage or injury to others arising from its use of the Premises granted by this License, including any and all improvements, facilities, installations, and fixtures, or the use thereof by the people of the Federated States of Micronesia and Yap, or by any grantee, sublicensee, permittee, agent, officer, or assignee of the Licensees.

ARTICLE 9. HOLD HARMLESS

The Licensees shall indemnify and save harmless the United States, its officers, agents, servants, and employees, from all liability under the Federal Tort Claims Act (62 STAT 869, 982; 28 U.S.C. Sec. 2671, 2680) or otherwise, for death or injury to all persons, or loss or damage to the property of all persons resulting from the use of the Premises by the Licensees.

ARTICLE 10. RESIDENTIAL DWELLINGS

No permanent residential dwellings or settlements shall be established on the Premises covered by this License, or any party thereof, without the prior approval of the United States.

ARTICLE 11. REVOCATION

This License may be revoked at any time if it is determined by the United States that the use being made of the Premises, or any part thereof, pursuant to this License, is not compatible with present or immediate future use thereof by the United States. Upon written notice of the revocation of this License by the Licensor, in whole or in part, the Licensees shall quit the Premises and surrender possession of all or any part of the land and improvements covered by this License.

ARTICLE 12. TERMINATION BY LICENSEES

The Licensees shall have the right to terminate this License upon thirty (30) days' written notice by one of them to the Licensor.

ARTICLE 13. REMOVAL OF PROPERTY

Upon the revocation of this License by the Licensor as provided in Article 11 hereof, or its termination by one or both Licensees as provided in Article 12 hereof, the Licensees will vacate the Premises, remove its property therefrom, securely cap any water wells located on the Premises, and restore the Premises to a condition satisfactory to the Licensor, ordinary wear and tear and damage beyond the control of the Licensees excepted. The Licensees shall be given a reasonable period of time to remove all of its property from the Premises.

ARTICLE 14. UTILITIES

If utilities and services are furnished by the Licensor to the Licensees for their use of the Premises, the Licensees shall reimburse the Licensor for the cost thereof as determined by the Licensor in accordance with applicable statutes and regulations.

ARTICLE 15. NONDISCRIMINATION

It is a condition of this license that no person shall, on the ground of race, color or national origin, be excluded from participation in, or denied the benefits of, or be otherwise subjected to discrimination in the use of the facility. The United States Coast Guard reserves the right to revoke and cancel this license in the event of breach of such nondiscrimination condition during the period of the license.

ARTICLE 16. UNITED STATES RULES AND REGULATIONS

The Licensees shall comply with such rules and regulations regarding security, ingress, egress, safety and sanitation as may be prescribed, from time to time, by the Commanding Officer, U. S. Coast Guard Loran Station, Yap, Western Caroline Islands.

IN WITNESS WHEREOF, the parties have hereto subscribed their names this 1st day of October, 1982.

FEDERATED STATES OF MICRONESIA

By

Secretary of External Affairs
Official Title

Ponape, Caroline Islands 96941
Address

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD

By

Commander,
Fourteenth Coast Guard District
Official Title

300 Ala Moana Blvd.
Honolulu, Hawaii 96850
Address

YAP STATE GOVERNMENT

By

Governor
Official Title

Yap, Caroline Islands
Address

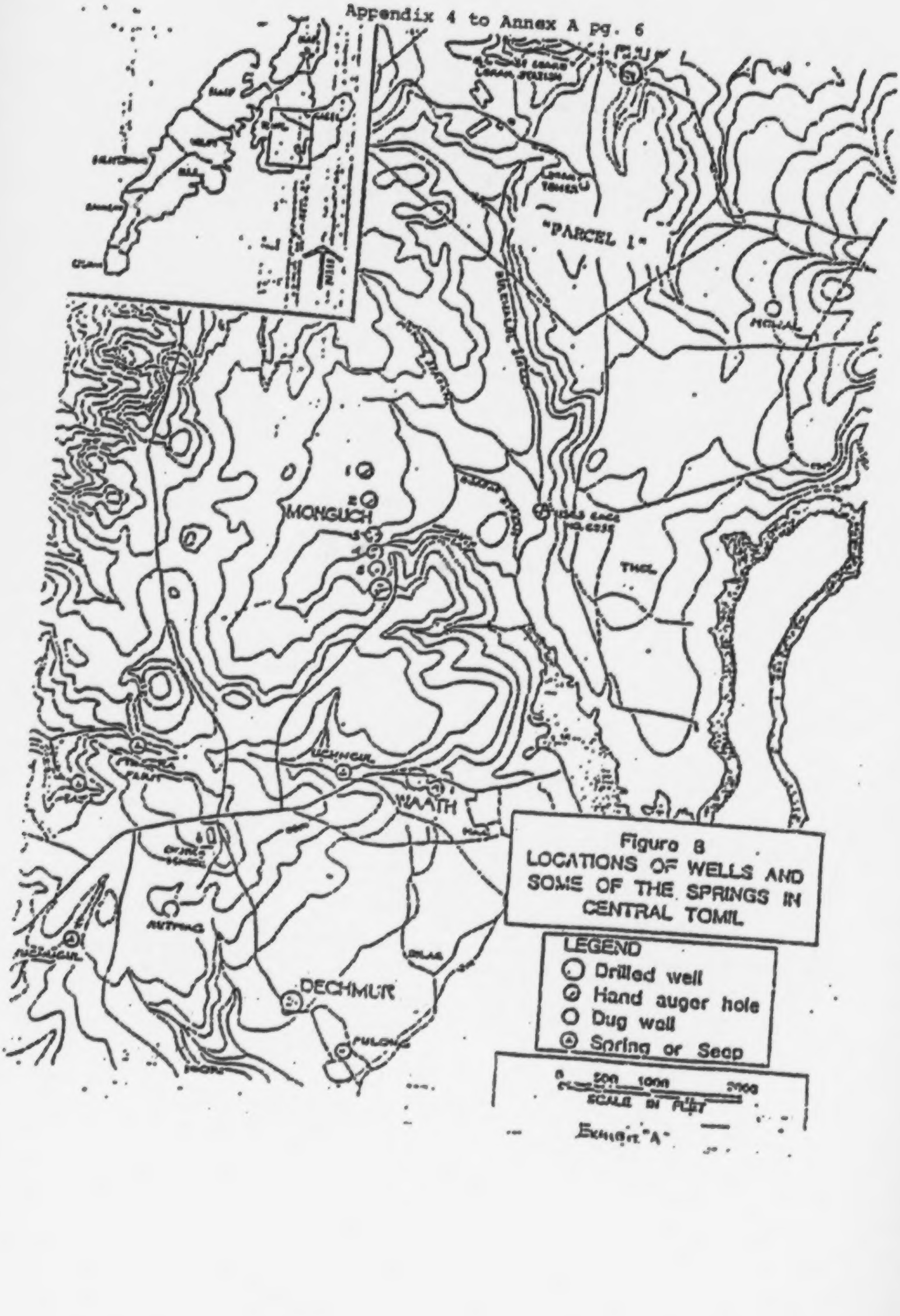
Appendix 4 to Annex A pg. 5

RECORDING DATA

Filed and recorded in Book _________, Page _______, at _______ a.m./p.m., this _________ day of ______________, 198_.

____
Clerk of Courts, Yap State

Appendix 4 to Annex A pg. 6


"PARCEL 1"
MONGUCH
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THOL
UCHNGUL
WAATH
DECHMUR
PULONG
LEGEND
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SCALE IN FEET

Figure 8
LOCATIONS OF WELLS AND SOME OF THE SPRINGS IN CENTRAL TOMIL

Exhibit "A"

Annex B

Civic Action Teams

I. Provision of United States Civic Action Teams

A. The Government of the United States shall make available to the Government of the Federated States of Micronesia the services of Civic Action Teams (CATs) which shall engage in such projects and activities as may be identified by the Government of the Federated States of Micronesia and as mutually agreed by the Government of the United States and the Government of the Federated States of Micronesia.

B. The Government of the United States shall make available to the Government of the Federated States of Micronesia up to four CATs upon request and under the following provisions:

1. The establishment of an annually agreed work program, in accordance with paragraph III of this Annex, designed to assist in the fulfillment of the national developmental goals of the Federated States of Micronesia; and

2. The sharing of CAT costs by the Government of the United States and the Government of the Federated States of Micronesia in accordance with paragraph II of this Annex, taking into consideration the assistance provided in Section 212(b) of the Compact.

C. The CAT services may be terminated under any of the following conditions:

1. At the request of the Government of the Federated States of Micronesia;

2. United States military necessity;

3. Failure of the United States Congress to appropriate the necessary funds; or

4. Failure of the Government of the Federated States of Micronesia to reimburse the Government of the United States for its share of CAT costs in accordance with paragraph II of this Annex.

D. Unless otherwise agreed, the CATs shall be organized and equipped in accordance with paragraph IV to this Annex. The provision of additional equipment for use by a CAT shall be the responsibility of the Government of the Federated States of Micronesia, but the Government of the United States shall attempt to make provision for such equipment subject to its availability.

E. In addition to their principal role and as mutually agreed, the CATs shall provide training and apprenticeship opportunities to citizens of the Federated States of Micronesia. Such apprentices shall be nominated by the Government of the Federated States of Micronesia which shall be responsible for any expenses incurred by such persons in these training and apprenticeship programs.

II. Support and Operation of Civic Action Teams

A. The basis for sharing of CAT costs shall be that the Government of the United States shall support all team costs and the Government of the Federated States of Micronesia shall provide an annual amount of $250,000.00 for each deployed team. This payment by the Government of the Federated States of Micronesia to the Government of the United States shall commence on the first anniversary of the effective date of this agreement.

B. The Government of the United States shall assume all responsibility associated with the provision of CATs with the exception that the Government of the Federated States of Micronesia shall provide:

1. construction materials for projects;

2. suitable public or private land, as required, for CAT base camps;

3. all necessary access and entry clearances into public and private land and all permits for projects;

4. transportation or reimbursement, as mutually agreed, for inter-island movement within the Federated States of Micronesia of personnel, supplies and equipment; and

5. new base camp facilities coincident with team relocation, unless otherwise mutually agreed.

III. Planning Cycle for Civic Action Team Employment

A. The National Government of the Federated States of Micronesia, in addition to using the CATs to assist in national development projects, may also use them to assist state or local governments in the Federated States of Micronesia and for other such projects and activities, including outer island development projects, as may be mutually agreed between the Government of the United States and the Government of the Federated States of Micronesia.

B. The Government of the United States and the Government of the Federated States of Micronesia shall review, on an annual basis or otherwise as may be mutually agreed, all matters relating to the operation and use of the CATs. The annual review shall include planned CAT projects, activities and associated costs.

C. The Government of the United States shall make every effort to inform the Government of the Federated States of Micronesia as early as possible of the number of CATs and personnel which it can make available during the following fiscal year. The Signatory Governments shall make every effort to inform each other as soon as possible should temporary or permanent withdrawal of any CAT be required pursuant to paragraph I of this Annex.

IV. Civic Action Team Composition

A. Team Personnel Composition. Subject to the provisions of paragraph III of this Annex, each CAT will normally be composed of one officer and 12 enlisted personnel as follows:

1. "Officer in Charge (OIC)": Commissioned officer who is preferably a graduate engineer or architect (or having equivalent experience).

2. "Assistant Officer in Charge (AOIC)": Non-commissioned officer who is a trained construction specialist in equipment operation or general building with extensive experience operating construction units.

3. "Equipment Operators": Two individuals with extensive experience with a wide variety of construction equipment and operations, including cranes.

4. "Carpenter/Woodcraftsman/Mason": Two individuals experienced in carpentry, concrete and timber construction.

5. "Steel Worker/Welder": One individual experienced in gas and arc welding, cutting, sheet metal fabrication, structural steel erection and pioneer-type rigging.

6. "Construction Equipment Mechanic": Two individuals experienced in maintenance of a variety of automotive and construction equipment with one experienced in parts procurement and stock level determination.

7. "Utilitiesman/Plumber/Refrigeration Mechanic": One individual experienced in plumbing, layout, pump installation and maintenance, refrigeration and well drilling.

8. "Construction Electrician": One individual experienced in interior wiring, pole line construction and small power plant installation, maintenance and operations.

9. "Engineering Aide/Surveyor/Draftsman": One individual experienced in planning and estimating, drafting, surveying and soil analysis.

10. "Hospital Corpsman/Medic": One specialist in field medicine, public health and personal hygiene, and qualified for independent duty.

B. Team Equipment Allowance. Subject to the provisions of paragraph III of this Annex each CAT shall normally include the following standard equipment allowance:

1. Truck, ¼ ton Utility, One (1)
2. Truck, 1 & ¼ ton Cargo, One (1)
3. Truck, 5 ton Dump, Three (3)
4. Trailer, Semi-dolly, One (1)
5. Trailer, Tilt top 25 ton, One (1)
6. Mixer, Concrete Portable, One (1)
7. Grader, Motor, One (1)
8. Loader, Front End Rubber Tire, One (1)
9. Roller, Vibratory, One (1)
10. Tractor, Crawler TD-20, One (1)
11. Generator, 30KW, Two (2)
12. Welder, Arc, One (1)
13. Pump, Centrifugal, One (1)

Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 227, 321 and 323 of the Compact of Free Association

IN WITNESS WHEREOF, the undersigned, duly authorized for the purpose, have signed the present agreement.

DONE at Honolulu, Hawaii, in duplicate, this 1st day of October, 1982.

FOR THE GOVERNMENT OF THE UNITED STATES:

FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA:

Agreement Between
The Government of the United States
and
The Government of the Federated States of Micronesia
Regarding Friendship, Cooperation and Mutual Security
Concluded Pursuant to Sections 321 and 323 of
The Compact of Free Association

PREAMBLE

The Government of the United States and the Government of the Federated States of Micronesia:

Reaffirming their desire to live in peace with all peoples and all governments and their desire to strengthen and support the cause of peace in the Pacific area;

Desiring to declare publicly and formally their sense of unity, so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific area;

Mindful that the Government of the United States and the Government of the Federated States of Micronesia, in the exercise of their respective capacities for the conduct of foreign affairs, have entered and do enter into agreements which are implemented in accordance with their respective constitutional processes; and

Reaffirming the purposes and principles of the Compact of Free Association which contributes to regional peace and mutual security

by providing United States undertakings for the defense of the Federated States of Micronesia and assistance toward its economic advancement and self-sufficiency;

NOW THEREFORE AGREE:

ARTICLE I

The Signatory Governments rededicate themselves to the principle that any international disputes in which they may be involved shall be settled by peaceful means and in such a manner that international peace, security and justice are not endangered.

ARTICLE II

The Signatory Governments shall consult at the request of either Government, whenever the political independence of either of them or their mutual security is threatened in the Pacific.

ARTICLE III

The Signatory Governments recognize that, in view of the special relationship between their peoples, any attack on the Federated States of Micronesia would constitute a threat to the peace and security of the Pacific area and a danger to the United States. In the event of such an attack or the threat thereof, the Government of the United States would take action to meet the danger to the United States and the Federated States of Micronesia.

ARTICLE IV

1. The Signatory Governments, in recognition of the obligations undertaken by the Government of the United States in this Article and in Article III of this Agreement, shall inform one another promptly and shall consult in the event either of them has reason to believe that a third country seeks access to or use of the Federated States of Micronesia by military personnel or for military purposes.

2. If the Government of the United States determines that any third country seeks access to or use of the Federated States of Micronesia by military personnel or for military purposes, the Government of the United States has the authority and responsibility to foreclose such access or use, except in instances where the two Governments otherwise agree.

3. The Government of the United States shall exercise its authority and responsibility under this Article with due respect to the authority and responsibility of the Government of the Federated States of Micronesia for its internal and external affairs, including the responsibility to assure the well-being of its people.

4. The Government of the Federated States of Micronesia shall render appropriate support and assistance to the Government of the United States in meeting its responsibilities under this Article. Such assistance may include the removal from the Federated States of Micronesia, at the request of the Government of the United States, of individuals whose presence constitutes third country access to or use of the Federated States of Micronesia by military personnel or for military purposes.

ARTICLE V

The Signatory Governments recognize that the sustained political development and economic advancement of the Federated States of Micronesia are necessary contributing elements to the attainment of the mutual security goals expressed in this Agreement. The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of the Federated States of Micronesia. To those ends, should the terms of Articles I through VII of this Agreement become applicable pursuant to Article VIII, in light of the continuing special relationship between the Signatory Governments, and subject to the provisions of this Agreement:

1. The Government of the United States reaffirms that the Federated States of Micronesia is self-governing and that the Government of the Federated States of Micronesia, acting in accordance with the

Constitution of the Federated States of Micronesia, has the capacity to maintain and conduct diplomatic, trade and commercial relations without interference or intervention.

2. The Signatory Governments shall consult at the time the terms of this Agreement become applicable, and periodically thereafter, to examine the economic advancement of the Federated States of Micronesia, taking into account the internal and external revenues available to the Federated States of Micronesia and the relationship of its need for external economic assistance to its most recent levels of United States assistance. Based on such consultations, the Signatory Governments shall enter into appropriate arrangements as mutually agreed.

ARTICLE VI

The Signatory Governments shall consult at the time the terms of this Agreement become applicable, and periodically thereafter, to examine the needs, if any, of the Government of the United States for defense facilities and operating rights in the Federated States of Micronesia. Based on such consultations, the Signatory Governments shall enter into appropriate arrangements as mutually agreed.

ARTICLE VII

The Signatory Governments shall establish a Council, consisting of the United States Secretary of State and the Federated States of Micronesia Secretary of External Affairs or their designees, to carry out consultations as provided in this Agreement. The Council shall be so organized as to be able to meet at any time. Designees of the respective Secretaries shall be senior officials of their Governments, unless otherwise mutually agreed.

ARTICLE VIII

In order to give effect to their undertakings in this Agreement:

1. The Signatory Governments shall exercise their authority and responsibility under this Agreement in accordance with their respective constitutional processes.

2. The Government of the Federated States of Micronesia recognizes that this Agreement contains international obligations and shall submit this Agreement for approval as a treaty pursuant to Article IX, Section 4 of the Constitution of the Federated States of Micronesia.

3. The Government of the United States recognizes that this Agreement is an Executive Agreement of the United States containing international obligations and shall execute it in accordance with its constitutional processes.

ARTICLE IX

This Agreement shall come into effect simultaneously with the Compact of Free Association. The terms of Articles I through VII of this Agreement shall become applicable upon expiration or termination of Title Three of the Compact of Free Association.

ARTICLE X

This Agreement shall remain in full force and effect until terminated or otherwise amended by mutual agreement. The Signatory Governments shall consult whenever either of them desires to discuss this Agreement with the other or to propose any amendment.

ARTICLE XI

The Definition of Terms set forth in Article VI of Title Four of the Compact of Free Association is incorporated in this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized for the purpose, have signed the present agreement.

DONE at Honolulu, Hawaii, in duplicate,

this 1st, day of October, nineteen hundred and

eighty-two.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA

Agreement between the Government of
the United States of America
and the Government of
the Federated States of Micronesia
Regarding Aspects of
the Marine Sovereignty and Jurisdiction of
the Federated States of Micronesia

PREAMBLE

The Government of the United States and the Government of the Federated States of Micronesia:

Reaffirming that, in the exercise of its foreign affairs capacity, the Government of the Federated States of Micronesia shall conduct in its own name and right foreign affairs relating to the law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law;

Noting the declared intention of the Government of the Federated States of Micronesia that it shall become a Contracting Party as soon as possible to the Convention resulting from the Third United Nations Conference on the Law of the Sea;

Recognizing the importance to the island nations of the Pacific and to other nations of the benefits and protections of the Convention resulting from the Third United Nations Conference on the Law of the Sea;

Acknowledging the importance to their countries and peoples of a uniform law of the sea in accordance with generally recognized international law; and

Acknowledging the capacity of the Government of the Federated States of Micronesia in its own name and right to become a Contracting Party to the Convention resulting from the Third United Nations Conference on the Law of the Sea;

NOW THEREFORE AGREE:

ARTICLE I

The Government of the Federated States of Micronesia by this treaty obligation limits the statement of marine territory and jurisdiction in Article I, Section 1, Sentence 2 of the Constitution of the Federated States of Micronesia by agreeing that Article I, Section 1, Sentence 2 shall not be effective to claim an archipelago or a regime of archipelagic waters, or to claim any other aspect of marine territory or jurisdiction not consistent with generally accepted international law.

ARTICLE II

The undertakings of Article I of this Agreement extend to all other States.

ARTICLE III

The Government of the United States recognizes that this Agreement, which shall have the full force and effect of an Executive Agreement of the United States, is a treaty obligation under international law.

ARTICLE IV

The Government of the Federated States of Micronesia recognizes that this Agreement contains "international treaty obligations" as those words are used in Article I, Section 1 of the Constitution of the Federated States of Micronesia and agrees to submit this Agreement for approval as a treaty pursuant to Article IX, Section 4, of the Constitution of the Federated States of Micronesia.

ARTICLE V

This Agreement shall come into effect simultaneously with the Compact of Free Association and shall remain in effect during the effective period of Title Three of the Compact of Free Association between the Governments of the United States and the Federated States of Micronesia.

ARTICLE VI

The provisions of this Agreement may be amended at any time by mutual agreement.

ARTICLE VII

Nothing in this Agreement shall prejudice any undertaking by either the Government of the Federated States of Micronesia or the Government of the United States toward the other in the Compact of Free Association between them.

ARTICLE VIII

Nothing in this Agreement is intended to or shall prejudice any treaty obligation assumed, or any rights, jurisdiction or authority gained or confirmed, by the Government of the Federated States of Micronesia or the Government of the United States in becoming a Contracting Party to the Convention resulting from the Third United Nations Conference on the Law of the Sea.

ARTICLE IX

Nothing in this Agreement affects or prejudices the rights, freedoms and obligations of the Government of the United States under international law with respect to high seas freedoms and the exercise of rights and jurisdiction over the waters or seabed and subsoil or any other matter related to the law of the sea.

IN WITNESS WHEREOF, the undersigned, duly authorized for the purpose, have signed the present agreement.

DONE at Honolulu, Hawaii, duplicate, this 1st day of October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA:

SENATE COMMITTEE
ENERGY AND NATURAL RESOURCES
RECEIVED
JAN 28 1982
WASHINGTON, D.C. 20510

UNDER SECRETARY OF STATE
FOR SECURITY ASSISTANCE, SCIENCE AND TECHNOLOGY
WASHINGTON

January [illegible]

UNCLASSIFIED
WITH SECRET/NOFORN ENCLOSURE

Dear Mr. Chairman:

On June 3, 1980, the Senate Energy and Natural Resources Committee held an oversight hearing on the Micronesian political status negotiations. You will recall that the Committee, as part of the hearing, asked the last Administration to provide written answers to some five hundred questions. When this Administration took office, it determined to perform a policy review with respect to the political status negotiations and asked the Committee's indulgence in delaying the submission of answers to the questions, which were not answered by the last Administration, until completion of the policy review. Your Committee staff agreed to this.

I am now pleased to forward to you answers to those of the original questions which relate generally to the political status negotiations and to U.S. policy in Micronesia. All of the answers are unclassified except the three included in the classified enclosure to this letter. The answers reflect the policies and programs of this Administration and are based on the results of our policy review. I hope to forward to you answers to the remaining questions, i.e., those which refer to specific sections of the Compact of Free Association, in the near future. We appreciate very much the Committee's understanding of the reasons for our delay in responding to these questions.

Sincerely yours,

James L. Buckley

Enclosure

The Honorable
James A. McClure,
Chairman, Committee on Energy and
Natural Resources,
United States Senate.

UNCLASSIFIED
WITH SECRET/NOFORN ENCLOSURE

UNCLASSIFIED

SENATE ENERGY COMMITTEE
QUESTIONS & ANSWERS

Sections 1 thru 5	(UNCLASSIFIED)
Tables	(UNCLASSIFIED)
Enclosure	(SECRET/NOFORN)

UNCLASSIFIED

Section 1

Senate Energy Committee Questions

1.1. What is the basis of U.S. authority in the TTPI?

United States authority in the Trust Territory of the Pacific Islands derives from the Trusteeship Agreement concluded with the Security Council of the United Nations on April 2, 1947; the Joint Resolution of the Congress of July 18, 1947, approving the Trusteeship Agreement; the Act of June 30, 1954, as amended; and Executive Order No. 11021, dated May 8, 1962. The Act of June 30, 1954, provides in part that:

> "Until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct or authorize." (48 USC 1681(a).)

1.2. How does the Trusteeship Agreement for the TTPI differ from other U.N. Trusteeship Agreements and how does it differ from the terms of the Class C Mandate formerly held by Japan for the area?

A. The TTPI differs from other ten former trusteeships in that it was the only strategic trust created, as provided in Article 82 of the United Nations Charter. Article 83 of the Charter provides that all functions of the U.N. relating to strategic trusteeships, i.e. the TTPI, shall be exercised by the Security Council with the assistance of the Trusteeship Council. In practice, the Trusteeship Council has performed this oversight role. (The U.N. Charter provides that the General Assembly performs all functions for the non-strategic trusteeship areas.) The U.N. Charter and the Trusteeship Agreement entitle the United States, as Administering Authority, to establish military bases in the Trust Territory for the maintenance of international peace and security.

B. A U.N. Trusteeship differs from a Class C Mandate of the League of Nations in that the mandate forbad military use, and allowed petitions for redress only through the administering Government.

1.3. What are the rights of the U.N., the U.S. and the various Micronesian peoples under the Trusteeship Agreement?

A. In addition to the applicability of the general principles of the U.N. Charter, the Trusteeship Agreement also provides that Articles 87 and 88 are specifically applied. These include the role of the Trusteeship

Council in considering reports submitted by the U.S., in accepting petitions and examining them in consultation with the U.S. and in providing for periodic visits to the Trust Territory at times agreed upon with the U.S. The U.S. is also obligated to make an annual report to the U.N. on the basis of a questionnaire formulated by the Trusteeship Council on the political, economic, social and educational advancement of the inhabitants of the Trust Territory.

B. The basic rights of the U.S. include full administrative, legislative and judicial powers, the right to establish military bases and station troops in the Trust Territory, to close it, or part of it, for security reasons and to use volunteer forces from the TT.

C. The basic rights of the Micronesians are the basic freedoms of speech, press, assembly, worship, migration and movement, the right to develop in the political, economic, social and educational areas, to hold a citizenship and to be protected by the U.S. when abroad.

1.4. What are the objectives of the Trusteeship Agreement and what has the U.S. done to achieve those objectives?

A. The central objectives of the Trusteeship Agreement are:

-- to further international peace and security;

-- to promote the political, economic, social, and educational advancement of the inhabitants of the Trust Territory;

-- to develop "self-government or independence" in accordance with the freely expressed wishes of the peoples of the Trust Territory; and

-- to encourage respect for fundamental freedoms for all, without distinction as to race, sex, language or religion, including freedom of speech, press, worship and movement and the respect for human rights.

B. To achieve these objectives the U.S. has concentrated its programs in four broad fields:

-- Political

- democratic and locally elected constitutional governments have been installed;

- the Micronesians will be given an opportunity to exercise their right to self-determination.

-- Economic

- little real development has taken place but some productive enterprises are operating in the areas of tourism, copra production, and small-scale exploitation of fishery and sea-bed resources.

-- Social

- substantial progress in health and in the preservation of Micronesian culture.

-- Education

- substantial progress has been made in education using U.S. model, including near universal primary and secondary education.

1.5. The Administration has consistently stated that the Trusteeship will terminate in 1981 — is this statement your expectation of the chronology of termination or is there a legal expiration date on the Trusteeship?

The 1981 target date for Trusteeship termination had been U.S. policy since 1974. This Administration intends to terminate the Trusteeship Agreement as soon as the political status negotiations have been completed and the results have received the requisite approvals. The Trusteeship Agreement itself contains no mandatory expiration date, nor can it be terminated without the consent of the U.S.

1.6. What is the administrative framework for the administration of the TTPI; how has this framework evolved since the islands were secured during World War II; and what are the present legal authorities of the Office of Territorial Affairs, the High Commissioner, and the local State governments?

The U.S. administrative framework for the Trust Territory started with Naval Administration in 1946 and evolved to civilian administration in 1951 (except for the Mariana Islands). A High Commissioner, appointed by the President, held full executive and legislative powers until 1965, when the territory-wide Congress of Micronesia was formed under a charter from the Secretary of the Interior. Since then, there has been a progressive movement of Micronesians into responsible government positions. As of January 1, 1981, the Northern Mariana Islands, Palau, the Marshall Islands and the Federated States of Micronesia had each installed a constitutional government with democratically elected executive and legislative branches. At present, the High Commissioner is the senior USG representative in the TTPI. As such, he is charged with the execution of the irreducible U.S. obligations under the Trusteeship Agreement and with administrative supervision of the Trust Territory headquarters. The Office of Territorial and International Affairs of the Department of the Interior has responsibility for coordinating Federal administrative activities regarding the Trust Territory Government, managing U.S. funds and providing policy and direction to the High Commissioner. The Governments of Palau, the Marshall Islands and the Federated States of Micronesia have been delegated authority for the day-to-day operations of their governments.

1.7. The U.N. Trusteeship Council has consistently opposed fragmentation of any trust area. It would appear that despite the experiment of the Congress of Micronesia, we now have seven entities in the TTPI, albeit four are loosely federated. What efforts has the U.S. made to encourage unity?

The U.S., like the Trusteeship Council, has always preferred unity and for many years did not accept petitions from the Northern Mariana Islands for separation. The U.S. has encouraged development of common TTPI institutions such as the Congress of Micronesia and the College of Micronesia and in this and other ways has encouraged Micronesians to think of themselves as citizens of a single entity. However, the U.S. reluctantly acquiesced in clear expressions of the NMI people's will in 1972 and commenced separate political status negotiations. Marshallese and Palauan petitions for separation between 1972 and 1977 were strongly discouraged by the U.S., and the separation of those entities was not accepted until they rejected a territory-wide constitutional proposal in the U.N.-observed referendum in July of 1978. Even now we continue to encourage joint action and have offered categories of economic assistance under the Compact which require joint action or agreement of the three Freely Associated States (FAS). We do not recognize other Micronesian separatist movements.

1.7.A. Why have those efforts failed?

The efforts to promote Micronesian unity have not been a complete failure, as was evidenced by the creation of the Federated States of Micronesia and the agreement of the Micronesian entities at Molokai in October of 1977 to form an all-Micronesian entity upon termination of the Trusteeship Agreement. But, for islands that are so vastly different and so isolated from each other, disunity is the norm, and the effort to develop a unified Micronesia is a very recent twentieth-century phenomenon. Political unity can only be successful when it enjoys the support of the Micronesians themselves.

1.7.B. What are the prospects that the Federated States will remain together?

The U.S. supports unity of the four states and will continue to work with local leaders to preserve the political integrity of the Federated States of Micronesia. In addition to our efforts, however, we believe that the Federated States will be effective in its own effort to preserve its unity. The constitution of the Federated States of Micronesia is written in such a way as to encourage unity and coordination among the Federated States, through the voting schemes of their congress, the methods of electing the executive, and in the allocation of funds. We believe the prospects are good for the preservation of FSM unity.

1.7.C. What is the magnitude of the separatist movements in (1) the Southern Marshalls, (2) the Mortlocks, (3) Faichuk, (4) Peleliu?

In Faichuk, an area of Truk Lagoon, a referendum authorized by the Truk Legislature was held in November 1977 on whether to separate from Truk. Of an estimated voting age population of between 4,000 and 5,000 persons, 2,679 voted in favor of separation and 496 voted against separation. The Congress of Micronesia took no subsequent action. More recently, in the summer of 1981, the Congress of the Federated States of Micronesia enacted legislation by which the Faichuk area of Truk State could become a separate state of the FSM. This legislation was vetoed by the President of the FSM. This move toward separate statehood by Faichuk should not be classified as "separatism" or "fragmentation" since Faichuk, whether or not a separate state, would remain a part of a united FSM.

The magnitude of the separatist movements in the other areas in the Trust Territory is more difficult to assess, but these groups are clearly in the minority. Generally, they represent people in the outlying islands, away from the main population centers. Developing viable alternatives to subsistence living is more difficult for them, and as a result frustrations occur with the existing economic order and governmental programs in the islands.

1.8. Annual appropriations for the Trust Territory have grown from relatively insignificant amounts in the late 1940's and 1950's to approximately $150 million at present.

1.8.A. Why has this increase taken place?

There are numerous contributing factors, including increased costs owing to inflation and the energy crisis, and new responsibilities that had not emerged in the 1950's (such as rehabilitation efforts for the nuclear victims of the Northern Marshalls). The principal cause of the increase, however, was a major shift in policy between the 1950's and the early years of the Kennedy Administration. During the first decade of U.S. civilian administration of the Trust Territory (1951-1961), the policy was largely one of preserving the islands of the Trust Territory as fully as possible in their pre-World War II, subsistence condition. Federal funds appropriated for the Trust Territory were then spent primarily on the costs of headquarters and district administration, and on the costs of operating surface and air transportation. Beginning in the 1960's, the Kennedy Administration concluded that the U.S. was obliged to introduce modern health and education programs, as close to the level of such programs in the States as was possible. It came to be recognized that infrastructure development would be essential if any development were to occur. Subsequent Administrations have adhered to this philosophy. Accordingly, U.S. appropriations for the Trust Territory have grown from annual amounts in the range of $5 million in the 1950's to amounts in excess of $100 million in FY 1980 and, in addition, very substantial federal categorical programs. In recent years, about a third of the annual amounts have been devoted to the construction of capital improvements to provide infrastructure -- roads, docks, airports, water, power, and sewerage systems. The FY 1982 Administration request for the Trust Territory is $63.8 million, which amount does not include Federal program funding.

1.8.B. Can you submit a table with the annual levels?

Attached at Table 1.

1.8.C. How do these levels compare both in total and per capita with the grant levels of other metropolitan states to dependent areas including former trust territories?

Both in total amounts and in per capita terms, U.S. budgetary support of the Trust Territory since the mid-1960's has outstripped the levels of grants by other metropolitan countries to their Pacific Islands dependencies or trust territories.

1.8.D. What is the present status of the capital infrastructure program?

The current five-year CIP program is on schedule in terms of construction. The FY 1981 appropriation request provided the final anticipated funding increment for the program. The Navy anticipates that, with the availability of the FY 1981 funds, all construction contracts will be awarded by August 1981, with construction of those projects to be under way by October 1981. There may be additional funding requirements due to cost-overruns, contractor claims or work-scope alterations.

1.8.E. Why isn't the 1st level CIP complete?

The basic funding for the first level CIP was completed with the appropriation of the full FY 1981 TTPI construction request. The last of all the construction projects will not be finished until late FY 1983 because many of the larger projects require two to three years for completion.

1.8.F. What is the status of the second level CIP?

There is no second-level CIP program as such, and none has ever been officially promulgated by the Department of the Interior.

1.8.G. What is the condition of the present infrastructure?

Facilities and infrastructure built during the early years of the trusteeship, before about 1975, are generally in poor condition. Facilities and infrastructure built within the last five years are in relatively good condition.

1.8.H. Can the Micronesians maintain the existing infrastructure?

Currently, they cannot maintain all of it. However, if each state adopts a sound O&M plan for its facilities, and with intensive training and monitoring of the Micronesian personnel either through technical assistance or by contract over the next three to five years, it should be possible for them to maintain their own facilities. Each of the Micronesian Governments is required to address the question of infrastructure maintenance and to develop maintenance programs in the national economic development plans which it is required to promulgate under the Compact of Free Association.

1.8.I. What is your estimate of the annual costs of maintenance of the infrastructure which will be in place by termination and how does that compare to local generated revenues by district?

The annual cost for operation and maintenance for all facilities including those that will be completed in FY 1983 is estimated by the Trust Territory Government to be $25 to $26 million because of large increases in fuel prices. It may be even higher if the price of fuel continues to increase. Micronesian tax revenues and reimbursements for services in each of the states is estimated in FY 1980 to be approximately $14 million to $16 million.

1.8.J. Is the infrastructure program relevant to the economic and social goals of the individual states?

Yes. The current infrastructure program was developed with the participation of Micronesian political leaders and the private sector. It represents in large measure their higher priorities. By providing for the improvement of airfields, roads, docks, sewer and water systems, the program addresses many of the major economic and social infrastructure requirements of the populated areas.

1.8.K. Has sufficient attention been paid to outer island development?

The main emphasis of the current infrastructure program has been on needs of the population centers since approximately 70% of the population resides there. Since much of the economic potential of the three entities is associated with the population centers, such past CIP projects as docks, seawalls, roads, schools, dispensaries and warehousing have had a high priority. Each of the Governments of Palau, the Marshall Islands and the Federated States of Micronesia is developing plans for construction projects in their outer islands.

1.8.L. Hasn't the over construction of the District Centers encouraged a migration from the outer islands to the District Centers?

Yes, but the migration has several related causes: employment opportunities, better social services such as health and education, and the attraction of larger, busier, and more exciting places in which to live. Additional development on the outer islands could reduce or reverse some of this migration, but its causes are more complex than simply the provision of capital infrastructure in the district centers.

1.8.M. How many people are employed by the public sector? How does that compare with overall employment?

Approximately 6,000 persons are employed in the public sector compared to 10,000 employed in the private sector. An additional 3,500 persons are self-employed in fisheries and agriculture.

1.8.N. What is annual cost of public sector employment? Can the individual states sustain this level with local resources post-trusteeship? What would happen without U.S. aid?

The annual cost of public sector employment is approximately $40 million, an amount which Palau, the Marshall Islands or the Federated States of Micronesia could probably not sustain without U.S. assistance. Were U.S. assistance to vanish, we would more than likely see a total collapse of the government organizations as they are now, and a gradual but painful return to the traditional economy of the early 1900's.

1.9. What are the economic resources of Micronesia?

The primary economic resources of Micronesia are marine resources, agriculture, and tourism. Marine resources are valuable both for subsistence and local consumption purposes and for commercial export. Trochus, in the early days of the trusteeship an important export, has been supplanted by artificial substitutes. The average annual commercial catch of tuna in Micronesian waters is estimated at 83,000 metric tons in the period 1973-1977. Agriculture is also important on the two levels of internal consumption and export. Commercial export products are primarily copra, with a 1979 value of $3,192,000, and much lesser amounts of pepper and other produce. Tourism is also a primary field of economic development. Slightly more than 23,000 visitor entries were recorded in calendar year 1978, and between 27,000 and 28,000 in 1979. Of the 29 hotels in the Trust Territory in 1979, 24 were Micronesian-owned. It is estimated that 500 jobs are directly involved in tourism with a payroll in excess of $1.2 million.

1.9.A. **What has been done to exploit them?**

Efforts to exploit Micronesian resources have been hampered by lack of capital and infrastructure and by the great distances from markets. Recent increases in fuel costs have escalated transportation costs and further compounded these difficulties.

The USG has funded major capital improvement projects throughout the islands in an effort to facilitate the development of the Micronesian resources. An adequate infrastructure including harbors, docks and airports, will enhance the potential for development of local resources. Also, each of the Micronesian Governments is now engaged in comprehensive economic development planning efforts which include inventories of local resources and strategies for their exploitation.

1.9.B. **Are the Micronesian states in danger of becoming economic hostages of Japanese fishing agreements? What control does the U.S. exercise on these agreements?**

The success of the Micronesian governments in concluding agreements with the Japanese Government and with Japanese fishing associations should not be regarded a placing the Micronesians "in danger of becoming economic hostages". We believe it is to the advantage of the Micronesians to engage in and conclude these agreements so that a greater share of the benefits of their fisheries resources may accrue to them. The Micronesians hope eventually to take a more active role in the exploitation of their own marine resources, retaining a larger share of the economic benefits for themselves.

The U.S. Coast Guard has certain enforcement responsibilities in Micronesian waters at the present time, one of which is the surveillance of fishing vessels; but otherwise the U.S. exercises no control over these agreements unless they are at the government-to-government level, in which case, during the Trusteeship period, the USG must grant approval on a case-by-case basis before an agreement can be signed and enter into force.

1.9.C. What differences exist between U.S. and Micronesian positions on law of the Sea questions and how have these differences been accommodated?

Although maritime jurisdiction and law of the sea matters have proven contentious during the political status negotiations, the previous differences have been resolved amicably in that context. Both the Palau and Federated States of Micronesia constitutions contain clauses which do not accord with the official U.S. position on maritime jurisdiction as set forth in U.S. public law. However, at the time those governments initialed the Compact, they simultaneously initialled separate agreements with the U.S. which will operate, during the free association period, to bring their maritime jurisdiction positions in line with the U.S. position. The Marshall Islands constitution contains no language contrary to the U.S. position on maritime jurisdiction or law of the sea.

1.9.D. What is the current status of superport planning in Palau and the Northern Marianas?

The idea of constructing a superport facility in the Palau Islands was abandoned several years ago. We know of no plans to proceed with such a facility in those islands.

The Government of the Northern Mariana Islands has signed a memorandum of understanding with a New York firm which will study the feasibility of constructing a complex in the Northern Mariana Islands.

1.9.E. What review and/or approval must the U.S. exercise?

A number of Federal statutes would need to be complied with if an official proposal were made for superport construction. These include the provisions of the National Environmental Policy Act, the Federal Water Pollution and Control Act, the Marine Protection Research and Sanctuaries Act, and the Endangered Species Act.

1.9.F. What is the annual cost of fuel in the Trust Territory?

The FY 1980 actual consumption of fuel in the Trust

Territory in dollar terms was:

Yap	$ 2,066,700
Ponape	5,064,000
Truk	5,286,850
Kosrae	597,700
Palau	9,051,000
Marshalls	9,093,000
TOTAL	$31,159,250

1.9.G. What efforts has the administration taken to (1) follow up the recommendations of this Committee to conduct a feasibility study of hydroelectric potential on Ponape or (2) to investigate the application of OTEC, wind, or solar energy sources?

The Department of the Interior is responsible for taking action on the recommendations of the December 1979 Committee Staff Report on the potential for hydroelectric power generation in the Trust Territory and will inform the Committee once these efforts produce results.

The Government of the Trust Territory, within the resources available to it, is investigating the possibilities of alternative energy applications in the islands. Through FY 1981, the Department of Energy has funded a number of small energy projects, and currently the Peace Corps is engaged in a detailed survey of energy-use throughout the islands. Most importantly, with the enactment of PL-96-597, the Department of Energy, in consultation with the Department of the Interior and the Micronesian Governments, has the necessary authority to proceed with a well-coordinated comprehensive study on the subject of alternate energy sources. A territorial energy assessment which deals in part with the Trust Territory has just been completed under this program.

1.9.H. What programs are presently under way to develop economic self-sufficiency and lessen dependence on federal aid?

Several programs are and have been under way to develop the economy. In the 1960's an Economic Development Loan Fund was established. Because of problems with the management of the fund, a moratorium was declared on further lending activity in 1975, but the moratorium was lifted in 1980 and a reorganized fund operation is being reinstituted. Criteria for borrowing from the fund include creation of new employment, import replacement, creation of vitally needed facilities and services, and creation of exports. The EDLF has a capitalization of $5 million.

Prior to 1970, outside investment was generally not encouraged under the theory that economic development should be reserved to Micronesians. In 1970, the Congress of Micronesia enacted the Foreign Investors Business Permit Act. In 1974 the U.S. policy that prohibited direct outside investment from other than U.S. sources was changed. As of December 1978, the estimated asset value of private foreign investment in the Trust Territory was approximately $18,730,000. This is the aggregate of investments by some 46 firms actively engaged in business.

Through the Bureau of Resources, the High Commissioner's staff attempts to coordinate programs in foreign investment, business development, and tourism; administers copra-purchasing agreements; obtains technical assistance in marine resource development; assists in the development of local cooperatives, credit unions, small businesses; and helps to administer agriculture, forestry and conservation programs. Officials of the Attorney General's staff serve as members of the local maritime authorities. Public Law 90-448 in 1968 extended the Small Business Act to the Trust Territory. The SBA may lend up to $150,000 in participation with the Economic Development Loan fund or commercial banks in the territory. The SBA may guarantee a maximum of $350,000 or not more than 90% of a bank loan, whichever is less.

1.9.I. In Federal program development in the Pacific, are the states of the TTPI being treated as if they were foreign governments or as if they were territories similar to Guam and American Samoa?

With one exception, the Trust Territory of the Pacific Islands is treated as domestic insofar as Federal programs are concerned. The exception is the special Congressional authorization for the Peace Corps to operate in the Trust Territory.

Federal programs are not extended to individual states of the Trust Territory; the authorization of eligibility is to the Trust Territory Government. Since the approval of the Covenant of the Northern Mariana Islands, however, authorizations of Federal programs have referred with increasing frequency to "the Northern Mariana Islands and the Trust Territory of the Pacific Islands" in recognition of the different future political status of the Northern Mariana Islands.

1.10.A. What studies have been done on the political, social, and economic conditions and potential for the Trust Territory since the Administrative Handbooks were prepared in the early 1940's for the Naval Administration?

A wide variety of background studies have been prepared since the Naval Administration period. These cover, in the main, economic aspects, although in recent years there has been considerable research by universities and private researchers, including business interests, on other aspects. A list of the major U.S.- or TTPI-sponsored or -funded studies is attached at Table 2. This list is not exhaustive but does highlight the major studies done under government auspices.

1.10.B. What were the reasons for the studies, what were the conclusions and how have they been implemented?

The majority of the studies were intended to provide basic background information. Certain basic studies, i.e., the present "Soil Survey: Study of the Trust Territory," are needed before any intensive agricultural development program can be planned. Considerable numbers of agricultural projects launched over the past 30 years have failed simply because basic information on soil conditions, etc., has not been available.

1.11.A. Various articles and television shows have criticized U.S. administration for either ignoring Micronesia by failing to provide sufficient levels of aid or creating a welfare state by providing too much aid in health, education and other areas. How would you respond?

The level of the United States funding provided through the Interior Department has risen from just over $4 million in fiscal year 1952 to a high of $117,666,000 in fiscal year 1977. During the 1970's Federal grant-in-aid programs also were extended to the Trust Territory. These are programs designed to assist mainland local governments to meet various needs and, to the extent the same needs existed in the Trust Territory, it was believed that the same kinds of assistance should be available to them. The net effect has been, in the view of some, a movement from an era of parsimony and inadequate support to an era of too much misdirected and poorly administered aid.

In an effort to meet criticisms of the extent of Federal categorical programs in the Trust Territory, the Department of the Interior issued a policy statement in November 1978 that called for no further increases and a review to eliminate those programs that were marginal. The response from certain quarters in Washington to this thought at limitation was negative and the policy was abandoned.

1.11.B. What is the Micronesian position?

The Micronesian response is mixed. The Federated States of Micronesia has generally favored the prudent extension of selected Federal programs, while Palau and the Marshalls have voiced greater reservations, fearing that more -- or even the present levels of -- Federal programs will perpetuate dependency on the U.S. government and stagnate local development.

1.11.C. What are the Federal programs presently available to Micronesia and what is their cost?

The last comprehensive survey of Federal programs available to the Micronesians was conducted in 1977 and reported to the Congress, pursuant to section 401 of Public Law 94-134, on January 1, 1978. The survey revealed that there were 482 Federal programs available to the Micronesians and that they were participating in 166.

It is estimated that in fiscal year 1977 Federal agencies provided approximately $26.6 million to the Micronesians in Federal grant programs. This figure has not been reduced in any of the succeeding fiscal years.

The Department of the Interior's statistics indicate that the dollar value of Federal programs in the Trust Territory in FY 1980 approximated $40 million, exclusive of the cost of grants for higher education in U.S. institutions.

1.11.D. **Are these programs beneficial?**

We have been concerned that the extension of Federal programs to the Micronesians may not always have been in their best interests; may have fostered dependency on the Federal government; may have contributed to the erosion of aspects of the Micronesian cultures and may be smothering Micronesian initiative and fostering a build-up of frustration with ever-deepening dependency which could produce adverse political results. As a result of these concerns, in order to be responsive to statements of similar concern by Micronesian leaders, and to facilitate a smooth transition to the post-trusteeship relationship with the United States when fewer Federal programs will be available, the Department of the Interior and the High Commissioner adopted a policy in November 1978 that was to have contained the expansion of Federal programs in Micronesia. It was agreed that for the remainder of the Trusteeship:

- The Department of the Interior would not seek or recommend authorization of new Federal programs for the Trust Territory.

- The Department of the Interior would request other Federal agencies not to increase their existing programs to the Trust Territory.

- The Trust Territory would continue its existing policy of not expanding participation in existing Federal programs.

- The Trust Territory would survey the list of existing programs so as to eliminate those that were marginal or of low priority (defined as those with excessive administrative costs in terms of benefits to recipients of the program, and those that might appropriately be phased out prior to the termination of the Trusteeship).

Once this policy was announced, however, it met with strong opposition and was, for all practical purposes, abandoned. Efforts are continuing, in consultation with the Micronesian Governments and interested members of Congress, to revise this pre-termination Federal programs policy and, generally, to monitor Federal Programs.

1.11.E. **Will these programs continue under free association?**

The Compact provides that, for the most part, they will not. Compact Section 221 provides that certain Federal services, specifically, the Weather and Postal Services, the Federal Emergency Management Administration, the Federal Aviation Administration and the Civil Aeronautics Board, will continue to operate at no cost to the freely associated states. It further provides that an agreed level of programmatic or block grant Federal assistance in education and health will continue, as will alternate energy activities commenced before termination of the trusteeship agreement. Finally, Compact Section 224 provides a mechanism for the extension of additional Federal programs if both the U.S. and the freely associated states agree.

1.11.F. **So long as the Micronesian entities are in a political relationship with the U.S. shouldn't they be treated as if they were a part of the U.S. for the purposes of Federal programs in the hope that the relationship might continue?**

The political relationship of free association is entirely unprecedented, having some of the characteristics of independence and some of territorial status. This character represents the particular advantage of the agreement -- that it meets the basic objectives of each party. U.S. Federal programs, while conferring valuable benefits on the Micronesians, are also seen by some Micronesians as perpetuating Micronesian dependency on the U.S. Continuing the programs in the hope of continuing the relationship represents a very considerable risk and could produce the opposite result. Encouraging Micronesians' efforts to become more self-sufficient economically represents a better hope for close, cooperative and long-lasting relations.

1.11.G. What are the Administration's plans for transition to the new status?

These activities fall into three areas:

- Assisting in development of constitutional governments.

- The orderly transfer of functions from the Trust Territory to the Micronesian governments.

- Assistance to Micronesians in foreign contacts prior to their assuming foreign affairs responsibility.

1.11.G.1 Do the Micronesians concur?

Each of the Micronesian governments is participating fully in the transition process.

1.11.G.2 Does the House concur?

This question would best be answered by the House itself.

1.12. How do you plan to administer our relationship with the new entities?

The question of Executive Branch organization to administer the new free association relationship has been studied by this Administration and a decision has been taken to implement an interdepartmental concept with a single office coordinating the management of the relationship. There will be consultation with this Committee and the counterpart House committee as the details for implementation are developed.

1.13. Is Micronesian displeasure at the thought of administration being placed in Interior a philosophic reaction to be treated as a part of the U.S. with other insular areas in relationship to the U.S. or a pragmatic decision to avoid what they feel has been insensitive administration?

Rather than attempting to characterize Micronesian views, we would recommend that the Committee question Micronesian representatives directly on this point.

1.14.A. What are the Administration's plans to upgrade our relationship with various insular areas?

President Carter's message of February 14, 1980, stated as to this point:

> "--the Secretary of the Interior will be given clear responsibility for all matters related to the territories and will be accorded increased support from other agencies and the

White House staff;

> "--the office charged with territorial liaison and assistance responsibility will be enhanced organizationally to help it deliver the services expected of it and will be headed by a new Assistant Secretary of the Interior for Territorial and International Affairs; and
>
> "--to further ensure a coordinated Federal effort, territorial matters will be among the major responsibilities of a senior assistant on my Domestic Policy staff."

This Administration is studying this statement as well as territorial policy generally and will make its decision in consultation with this Committee, the House Committee and the territorial representatives.

1.14.B. **Does this include Puerto Rico?**

This matter is under study. We are aware of the Committee's stated position on the subject.

1.14.C. **Could this framework include the freely associated states?**

We believe the Compact of Free Association, if approved, would itself constitute the type of upgrading which we seek in our relationship with Palau, the Marshall Islands and the Federated States of Micronesia.

1.14.D. **Does the Administration plan to be a more effective advocate for the territories or is Interior's performance on the Clean Air Act exemptions for the Guam Power Authority and the Immigration question on the Northern Mariana Islands the type of treatment that territories can anticipate?**

Advocacy of territorial concerns and the discharge of uniquely Federal responsibilities as they relate to the territories are equally important concerns.

1.14.E. **Can you detail the history of the citizenship question on the Northern Mariana Islands and how it was allowed to occur after President Carter's Territorial Message?**

In anticipation of granting U.S. citizenship to citizens of the Northern Mariana Islands at the termination of the trusteeship, the Immigration and Naturalization Service (INS) agreed late in 1977 that it would treat citizens of the Northern Mariana Islands administratively as though they were U.S. citizens for purposes of entry into the U.S. This ruling came into force on January 9, 1978, the date the President established for the installation of constitutional government in the

Northern Mariana Islands.

On January 30, 1980, the INS reversed its earlier ruling, holding that the special treatment accorded Northern Mariana citizens for this interim period until the termination of the trusteeship had no legal basis. This reversal was accomplished without advance consultation with either the Government of the Northern Mariana Islands or the Department of the Interior. Notably, it occurred before President Carter's message to the Congress of February 14, 1980.

After representations by numerous officials of other agencies here in Washington, the INS rescinded its January 30, 1980, directive in a ruling issued on March 24, 1980.

1.15. What are the ultimate objectives of the U.S. under free association? -- Independence? -- Continuation of the status? -- Permanent relationship?

The long-term objectives of the U.S. in the Micronesian political status negotiations have been constant since former President Nixon established them in 1971. They are:

- to fashion a close, enduring and mutually beneficial political relationship between the U.S. and the Micronesian peoples;

- to secure U.S. national security and defense objectives in the area; and

- to assist the peoples and governments of Micronesia in achieving a greater measure of economic self-sufficiency.

Free association has proven the most effective vehicle to achieve these results, but the relationship established under the draft Compact of Free Association is open-ended and could in time evolve into independence or integration into the U.S.

1.16. What is the positioh of the State Department on the legitimacy of free association?

United Nations General Assembly Resolutions 1541 (XV) and 2625 (XXV) recognized free association, if freely chosen by the people, as a status which corresponds to a full measure of self-government. Resolution 1541 states that "Free Association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent state the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes." Resolution 2625 provides that free association, when freely determined by a people, constitutes one mode of implementing the right of self-determination by that people. Free association, when it meets the above requirements as it does in the manner set forth in the Compact, is recognized as a legitimate political status by the international community. It would be portrayed as such by the United States in its dealings with the international community.

1.17. During the debate on the Northern Mariana Islands, Ambassador McHenry testified in opposition to the Covenant on social grounds. Does this Compact fulfill his analysis of the necessary preconditions for self-determination?

Former Ambassador McHenry was consulted on this question by the last Administration. As a preliminary matter, it appears inaccurate to characterize his 1975 testimony before this Committee as opposing the Covenant on social grounds. Mr. McHenry made several points at the time, chief of which was his urging that the Congress wait and consider the broader implications of the Covenant before taking a decision. He did not urge the Congress to approve or disapprove the Covenant, but instead not to act too quickly. In discussing the concept of self-determination, he expressed the view that the Micronesian people should have an opportunity to choose from the full range of status options.

1.18. Would the State Department object to either a continuation of free association after the fifteen years of this Compact or to permanent association of any of the Micronesian entities so desired (sic)?

No.

1.19. Will the freely associated states be dependent or independent from the standpoint of the U.N. and the requirement that the U.S. report on all non-self-governing territories?

By definition, the freely associated states will be self-governing but not independent. They will have exercised their right to self-determination and will have freely chosen the political status of free association. We do not forsee the freely associated states being placed on the list of non-self-governing territories which would be subject to the scrutiny of the Committee of 24. Although at present, the Committee of 24 annually examines the situation in the Trust Territory, the U.S. does not recognize the jurisdiction of the Committee to undertake this annual review and does not cooperate or participate with the Committee in this undertaking. Following termination of the Trusteeship Agreement, we foresee no continuing role for the Trusteeship Council or the Security Council with respect to the freely associated states although, in an effort to harass the U.S., unfriendly powers may on occasion attempt to focus U.N. attention of them.

1.20. What are the steps you plan to take to terminate the Trusteeship?

Following conclusion of the negotiations there must be a plebiscite on the free association arrangements which would be observed by representatives of the U.N., and the Compact will be submitted to Congress for its approval. Consistent with our obligations under the U.N. Charter and the Trusteeship Agreement, we would then take up the matter of trusteeship termination with the Trusteeship Council and Security Council.

1.21. How precisely do you plan to involve the Security Council of the U.N.?

We are not committed to a particular set of actions in the Security Council. We have only stated that we "intend at the appropriate time to take up the matter of termination with the Trusteeship Council and the Security Council."

1.22. What public and private representations have you made to other countries including Great Britain and France?

Our only public statement has been the policy statement quoted above (Question 1.21). We have discussed the matter privately in New York and elsewhere with several interested and friendly countries, including our British and French allies. We have informed them that we have not yet determined our final course of action in the Security Council and have requested that they give us the benefit of their advice on this issue.

We have also advised a number of other nations in the region that we have not yet determined what our final approach will be.

1.23. What will you do in the event of a Soviet veto?

We do not believe a Soviet veto is inevitable. The Soviets will not lightly veto a measure which has broad international, and particularly regional, support. Despite our best efforts, however, we cannot guarantee success in our attempt to obtain Security Council consent to termination. In such a situation, we would have to consider the procedural alternatives available to us, with a view to finding a solution which would best advance U.S. and Micronesian interests. We have made no decision on what precise procedure to follow and would not expect to do so until closer to the time for U.N. consideration of the question of Trusteeship termination.

1.24. Why is it necessary to commit ourselves at this time when the agreements have not been approved by either the Micronesians or the U.S. Congress?

Regardless of the timing or the outcome of the status negotiations, the U.S. is obligated to take up this matter at the U.N. in order to terminate the Trusteeship. This Administration, like its predecessors, is committed to termination of the Trusteeship Agreement as soon as the negotiations are complete and the Compact has received its requisite approvals. If this is to be the case, we should start to lay the groundwork for our efforts at the U.N. We have not, in any event, committed ourselves to any special approach in the Security Council.

1.25. Why were not the Micronesians consulted prior to your decision to announce that the approval of termination would be requested of the Security Council?

The position of this Administration, that is that it intends to take up the matter of Trusteeship Agreement termination with the Security Council and the Trusteeship Council, is based on U.S. legal obligations which are not subject to negotiation. The position was initially set forth in a letter from the Department of State to the Chairman of the Senate Foreign Relations Committee in 1975. The Micronesians were consulted prior to our reaffirmation of this longstanding position at the Trusteeship Council meeting in May of 1981. This Administration has not stated that Security Council approval is required for termination.

1.26. To what extent are decisions being made, as with Puerto Rico, to accommodate Third World interests rather than U.S. or Micronesian interests?

Our decisions on the matter of Trusteeship termination are being made and will continue to be made on the basis of United States interests. We always hope however to obtain broad international support for our policies, including those with respect to termination of the Trusteeship.

1.27. Who is negotiating for the U.S. and what is the relationship between OMSN and other federal agencies?

Since 1971, negotiations with the Micronesians have been conducted by the President's Personal Representative for Micronesian Status Negotiations. The negotiator has been supported by an interagency Office for Micronesian Status Negotiations staffed by personnel from Defense and State and supported administratively by Interior. OMSN is treated bureaucratically as a separate agency.

1.28. Why have the negotiations taken so long?

The Micronesian political status negotiations commenced in 1969. The primary cause of their long duration has been that the development and attainment of differing political aspirations on the part of the Micronesians has taken several years. When the process started, the Micronesians were administratively united. During the past 12 years, four separate political entities -- Palau, the Northern Marians Islands, the Marshall Islands and the Federated States of Micronesia -- have emerged. It has taken time for this process to occur and for the Micronesians to adjust to it. Also during this period there have been three changes of U.S. Administrations and each Micronesian entity has drafted a constitution and instituted an elected government. Evolutionary political development, especially when it involves, as it does in this case, acts of self-determination, is not a speedy process.

1.29. How do the principles set forth at Hilo and embodied in this Compact differ from the recommendation of the 1969 Final Report of the Micronesian Future Political Status Commission and the eleven point proposal submitted by the Micronesians to the U.S. in September 1969?

The Hilo Principles and the Compact are compatible with previous Micronesian proposals but represent an evolution of views on both sides in the direction of mutual accommodation.

1.30. In fact, had the U.S. agreed to the Micronesian proposal in 1969 the negotiations would likely have resulted in a similar Compact minus unilateral termination wouldn't it?

This is impossible to say. For example, the views of the Northern Marianas in favor of a territorial status separate from the other parts of the Trust Territory were lying just below the surface in 1969 and would have emerged irrespective of the U.S. reaction to the 1969 Micronesian proposals.

1.31. What have been the U.S. negotiating objectives since 1960, how were they formulated, when were they altered, and how are they achieved in this document?

U.S. negotiating objectives were not formulated until 1969 and 1971. Two enduring objectives emerged at that time:

-- A stable, friendly relationship which brings about a lessening of Micronesian economic dependence on the U.S.; and

-- A political relationship which assures to the U.S. the right to deny the area to outside hostile forces and the right to construct bases.

Each of these objectives is achieved in the Compact of Free Association and its subsidiary agreements.

1.32. To what extent has an overemphasis on military land requirements jeopardized permanent denial of the area?

We see the denial of access to Micronesian territory by non-U.S. military forces as wholly compatible with U.S. military land requirements in Micronesia.

1.33. What is the present situation in Palau and what are your expectations on conclusion of the negotiations?

Palau installed its new constitutional government on January 1, 1981. Previously, on November 17, 1980, Palauan negotiators initialed the Compact of Free Association and three of its subsidiary agreements with the U.S. At a meeting with officials of this Administration in early October, 1981, the Palau representatives reaffirmed their Government's commitment to the Compact and the already initialed subsidiary agreements.

1.34. What happens if Palau wishes to renegotiate the Compact?

We do not believe this is likely given the position taken by the Palau Government during the October, 1981 negotiating round. If Palau or one of the other freely associated states wishes to renegotiate or amend the Compact after it has come into effect, the Compact provides for amendment, but only upon mutual agreement with the United States.

1.35. Can Free Association be terminated without specific Congressional approval?

Once in force, the Compact of Free Association can be terminated unilaterally by the U.S. or any Micronesian party at any time. The relationship of free association which it describes and regulates will continue in force until terminated and is not limited to any specific time period. Despite the unilateral termination provisions, however, U.S. defense rights and economic assistance obligations would survive for their initial term of fifteen years. Certain other features of the relationship, including denial, are also immune from unilateral termination and extend beyond the fifteen-year term. The

Compact, once approved, will be a public law of the United States as well as an international agreement. There is certainly precedent in which both the Congress and the President, acting unilaterally, have terminated international agreements. The fact that the Compact will also be a public law serves to make the issue less clear-cut in that, while the Compact does contain a provision for unilateral termination by the Government of the United States, a future President may decide that the authority of the Government of the United States in this regard lies in his Office. It is likely that any action by the U.S. to terminate the free association relationship would involve, at a minimum, close consultation between the Executive and Legislative Branches.

Section 2

Senate Energy Committee Questions

2.1. What are the administration's foreign policy goals and objectives in the Pacific region? How do we envision the area 5, 10 and 15 years from now?

In the Pacific region, we seek to maintain peace and stability, assure access to products and markets and build a pattern of relations with the nations of the region based on friendship and cooperation. Key elements of our foreign policy in the region include:

-- Our alliances with Japan, Korea, the Philippines, Australia and New Zealand;

-- Deployment of U.S. military strength in Japan, Korea, the Philippines and Guam;

-- Enhancement of relations with the members of the Association of Southeast Asian Nations (ASEAN), which has demonstrated its effectiveness as a bulwark against communist expansionism;

-- Continuing to build a constructive relationship with the People's Republic of China through the enhancement of ties in a wide variety of fields;

-- Encouraging the resolution of situations that could give rise to hostilities, such as the threats posed to the Republic of Korea by North Korea and to Thailand by the presence of Vietnamese troops in Kampuchea;

-- Strengthening the further growth of trade, investment, and other economic ties with Japan and with other important trading partners in the region, such as the ASEAN countries, China, Korea and Australia;

-- Encouraging economic growth in the less developed countries of the region through U.S. assistance programs and through support of the international lending institutions; and

-- Maintaining close and cordial relations with the new island nations of the Pacific.

In general, the outlook for achieving these goals is favorable at this time. Soviet-supported expansionist pressure is being contained in both Southeast and North Asia; U.S. trade and investment in the region is expanding; we have maintained our ties with old friends in the region, ranging from Japan to Australia, while at the same time broadening our relations with other nations such as China. In the Pacific, the transition to self-government has proceeded smoothly; and the small new island states are democratic and favorably disposed toward the West. In all of our efforts, we are receiving significant cooperation from allies such as Japan, Australia and New Zealand. If these trends can be maintained, one can envision the Pacific five, ten or fifteen years from now as a region in which stability prevails, potential flash points have been insulated if not eliminated, trade has continued to grow, most economies have prospered and regional integration has taken on added political and economic importance.

2.2. How does our policy towards the Pacific territories and the Trust Territory mesh with U.S. foreign policy goals? How will this be affected when the new political status arrangements come into effect in Micronesia?

U.S. foreign policy and territorial policy in the Pacific interact in various ways. The U.S. territories of Guam and American Samoa as well as the Trust Territory of the Pacific Islands are geographically a part of the Pacific region, and their security and to a large extent their economic well-being depend on the effectiveness of our foreign policy in the region. Guam and the Trust Territory are important to our strategic interests in the region because of their location and, in the case of Guam, because it is the site of important air and naval installations. The U.S. territories and the Trust Territory share many interests and problems with the other island nations. With our encouragement, they take an active role in regional affairs, both through bilateral contacts with other island countries and through participation in regional institutions and programs such as the South Pacific Commission. They thus provide a unique and valuable link between the United States and the Pacific Island nations. To a significant extent, the U.S. territories as well as the Trust Territory symbolize the United States in the region; attitudes of other island nations toward the U.S. are affected by what they see of the way the U.S. deals with the islands under its jurisdiction. The anticipated establishment of three self-governing states in free association with the United States coincides with our overall Pacific policy, which has as a major objective the political development of the entire region in a fashion favorable and conducive to the achieving of U.S. interests.

2.3. What other nations have defense or security relationships with Pacific Island areas? What is the nature of those relationships?

New Zealand retains full responsibility for the defense of the two freely associated states of the Cook Islands and Niue. France is the sovereign authority in its Pacific dependencies and thus provides for the defense of those areas. Australia provides substantial logistic, financial and technical support to the armed forces of

Papua-New Guinea.

2.4.A. The State Department has been carrying on negotiations with the newly independent Pacific Island nations of Kiribati and Tuvalu and, in these negotiations, has agreed to relinquish U.S. territorial claims. Can this be done without the approval of Congress?

No. Senate consent to the treaties is necessary.

2.4.B. Why have we relinquished our claims?

Our claims for the most part were legally very weak. Most of the islands involved had never been under U.S. administration. With the independence of Tuvalu and Kiribati, we were encouraged to move to resolve the claims issue, which would have been a serious political liability for us in the South Pacific.

2.4.C. Was Congress consulted before or after the decision was made to relinquish our claims?

Extensive discussions were held with members and staff of Senate and House Committees before and during the treaty negotiation process.

2.4.D. Was Interior involved in the decision?

Interior was a member of the Interagency Group which, during the last Administration, determined the U.S. negotiating position.

2.4.E. Does the State Department have plans to relinquish any other claims?

In 1980, the United States signed treaties with the Cook Islands and New Zealand relinquishing U.S. claims respectively to four of the northern Cook Islands and to the three Tokelau Islands. These treaties also establish the maritime boundaries of American Samoa with the Cook Islands and Tokelau. By virtue of the boundary established in the Tokelau treaty, U.S. sovereignty over Swains Island, which was formerly claimed by New Zealand on behalf of Tokelau, is recognized.

2.4.F. If the Marshallese persist in a claim to Wake Island would the State Department favor relinquishment of Wake in order to promote friendly relations in a similar fashion as Canton?

In response to Marshallese claims, we have publicly and formally reaffirmed our sovereignty over Wake. Following a Marshallese assertion at the 1980 meeting of the United Nations Trusteeship Council, the U.S. delegation promptly rebutted the Marshallese claim. Similarly, in 1980, when the Marshall Islands asserted jurisdiction over waters off Wake in a commercial fisheries agreement, the Department sent letters to the Marshall Islands Government and to each of the other parties to the agreement pointing out that Wake is under U.S. sovereignty and that the Marshall Islands has no authority to regulate fishing in the waters surrounding the atoll. We do not regard U.S. sovereignty over Wake as negotiable.

2.4.G. If there is a Third World pressure to terminate the free association status with the Micronesians as there has been for Puerto Rico, will the State Department advocate unilateral termination by the U.S.?

No.

2.4.H. Can the Executive Branch terminate free association without specific approval by Congress?

The internal U.S. procedures for U.S. termination of the Compact of Free Association are not specified in that document, nor does the U.S. Constitution provide specific guidance on the termination procedure to be used for an international agreement such as the Compact. In the unlikely event that the Executive Branch were to seek unilateral termination, it would presumably proceed only after consultation with Congress.

2.5.A. What is the present state of U.S. relations with the Pacific Island nations?

On the whole, very good.

2.5.B. Where are we represented?

We have embassies in Fiji and Papua New Guinea. The Embassy in Fiji also oversees relations with Tonga, Tuvalu, Kiribati and Vanuatu. The Embassy in Papua New Guinea also has responsibility for the Solomon Islands. Our Embassy in New Zealand handles relations with Western Samoa, where we have a resident consular agent. Relations with Nauru are under the jurisdiction of our Embassy in Australia.

2.6. What do the Pacific Island nations think about what we are doing in Micronesia?

We have consulted with most of the Pacific Island nations over the past 3 years. In general, they support the direction of the Micronesian political status negotiations.

2.7.A. How much foreign aid do we give to the Pacific Island nations bilaterally?

We have a single regional aid program for all of the island countries. This regional program is administered from Fiji and is devoted largely to small community-oriented projects. Local supervision of projects is provided through cooperative arrangements with private voluntary agencies, the Peace Corps and regional organizations such as the South Pacific Commission. In FY 1982, the budget for the South Pacific regional aid program is $4.2 million.

Peace Corps programs operate in Fiji, Tonga, Western Samoa, Tuvalu, Kiribati and the Solomon Islands. A new program is being established for Papua New Guinea.

2.7.B. How will these nations view the assistance we will be giving Micronesia?

While we anticipate that the other island nations will observe with interest the financial support arrangements included in the Compact of Free Association, we have no indications that they regard this as a matter on which they should comment officially or take an official position.

2.8. What is the relation of our Pacific Island territories to the independent Pacific Island nations?

The U.S. territories in the Pacific participate, along with independent Pacific Island nations, in a number of regional activities. Guam, American Samoa, the Northern Mariana Islands as well as the three prospective freely associated states of Palau, the Marshall Islands and the Federated States of Micronesia are all members of the South Pacific Commission. The Federated States of Micronesia has observer status in the South Pacific Forum and membership in the South Pacific Bureau for Economic Cooperation. In addition, informal contacts between leaders of the U.S. territories and the Trust Territory and those of the independent nations are frequent and cordial.

2.9. What is the view of the major Pacific coastal states - Japan, Australia, New Zealand, China - to our Micronesian negotiations and the new status arrangements?

We have made repeated efforts to keep the governments of Australia, New Zealand and Japan informed as to the progress and direction of the political status negotiations. We have found all three governments supportive of our policies in the negotiations and of the free association relationship generally. The Peoples Republic of China has not formally expressed itself on the free association relationship, although its government has been briefed. The PRC does not participate in the work of the U.N.T.C. although it is a member.

2.10.A. What is the political, economic, and defense relationship between Australia, New Zealand, Great Britain and France with their former or present dependencies?

The relationships vary with each case and no established pattern is discernible. Each of the former metropolitan powers retains an interest in the economic well-being of its former territories. France retains complete sovereignty in its dependencies. New Zealand remains responsible for the foreign affairs and defense of its freely associated states of Niue and the Cook Islands.

2.10.B. How does this Compact's relationship differ from the relationship of New Zealand to the Cook Islands and Niue?

New Zealand legally retains foreign affairs authority. Cook Islanders and Niueans are also citizens of New Zealand. The governing instruments are acts of the New Zealand Parliament.

2.11.A. How do our non-proliferation goals mesh with our status and foreign policy objectives in the area?

The non-proliferation of nuclear weapons is a central element of American foreign policy, including U.S. policy toward the Pacific.

2.11.B. How do the various Pacific basin nations view U.S. proposal to store spent nuclear fuel in the area?

The U.S. has made no formal proposal to store spent nuclear fuel in the Pacific. We are conducting a joint study with Japan on the feasibility of island storage of spent nuclear fuel on a temporary basis in the Pacific until an acceptable permanent disposal technology is developed. This study has stimulated criticism in some quarters in the Pacific and we have sought to allay any concerns through consultations.

2.11.C. How does the U.S. and other Pacific States view the resumption of French nuclear tests at Moruroa?

In the past, the United States has encouraged France to adhere to the Limited Test Ban Treaty, which bans atmospheric testing of nuclear weapons. France has not conducted any atmospheric tests since 1975. The United States, as a long-term goal, continues to support the conclusion of a comprehensive ban on the testing of nuclear weapons. Most Pacific Island states have declared their opposition to continued French nuclear weapons testing at Mururoa.

2.12.A. What are the foreign policy interests of the Soviet Union in the Pacific region?

Soviet activity in the Pacific has been directed toward increasing its military power and diplomatic influence in the region and toward obtaining access to fisheries. In the north and west Pacific, the Soviets have sought to project their military power principally through the deployment of increasing levels of naval force and through support for such of its allies as Vietnam, with a view toward guarding against a perceived threat from China and offsetting U.S. military strength in the region. Soviet fishery operations in the region are centered in the cold water fisheries of the north and south extremes of the basin; agreements concluded with Australia and New Zealand have facilitated access by Soviet vessels to these fisheries. The Soviets have also made some effort to broaden their very limited ties with the small island countries, primarily by proposing expanded diplomatic relations and offering small amounts of economic assistance as well as support for oceanographic research. They have had virtually no success in these efforts.

2.12.B. Where are they represented?

The Soviet Union has no resident diplomatic missions in any of the South Pacific island nations. It does maintain formal diplomatic ties with several of the island nations, e.g. Tonga, Fiji and Papua New Guinea, through its embassies in Australia or New Zealand. It also maintains diplomatic missions in most of the littoral states of the north and west Pacific.

2.13. What are the chances that the Soviets may increase their presence in the Pacific, possibly even in Micronesia, after the Trusteeship ends?

We believe this is highly unlikely, especially in Micronesia. The Soviets, despite repeated attempts, have been unsuccessful in establishing representation in such areas as Papua New Guinea and Fiji. As to the freely associated states, a Soviet presence there would not be compatible with U.S. defense interests and would be denied pursuant to continuing U.S. authority in that field.

2.14. What is the position of Australia, New Zealand, and Japan with respect to a Soviet presence in the Pacific?

We believe that these countries would view with concern any expansion of Soviet naval or airpower presence.

2.15. What economic (including fishing) arrangements does the Soviet Union have in the Pacific basin?

The Soviets have entered into fishing arrangements with Australia and New Zealand. We are not aware of any formal Soviet economic arrangements with Pacific Island nations or territories.

2.16. Would a fishing arrangement with Palau similar to what the Soviet Union offered to Western Samoa violate the free association compact?

Under Section 313 of the Compact the U.S. would have the right to determine whether the arrangement were inimical to U.S. security and defense responsibilities. If such a determination were reached, the Palauan Government would be required to refrain from entering into the arrangement.

2.17. Would port privileges for refueling or provisioning in Palau for the Soviet fleet violate the Compact?

The same situation would obtain as in the fishing arrangement example.

2.18. What has been the reaction of the Soviet Union in the U.N. to the annual trusteeship review?

The Soviet Union has been highly critical of U.S. administration of the Trust Territory and has alleged repeatedly that the U.S. consistently violates the terms of the Trusteeship Agreement. It opposed separation of the Northern Marianas Islands, separate status negotiations for Palau and the Marshall Islands, and continuing U.S. defense rights, in particular. In 1979, 1980 and 1981, the Soviet Union voted against adoption of the Trusteeship Council's annual report.

2.19. Is Soviet technical and economic assistance to the free associated states permissible under the Compact?

The same situation obtains as with the fishing arrangement example. The Compact does not contain a list of prohibited potential arrangements between the freely associated states and other governments. It does grant the U.S. the unilateral right to determine whether such a potential action is inimical to our security and defense responsibilities and to prevent such action from taking place.

2.20.A. **What are Chinese intentions in the Pacific?**

We surmise basic Chinese intentions in the Pacific as the development and maintenance of friendly relations throughout the area.

2.20.B. **How will they react to a continuation of U.S. defense and security authority in Micronesia under the new political status agreements?**

To date we have no indication that the PRC will take a formal position on the Compact or will take action to inhibit implementation of its terms.

2.21.A. The Micronesian entities have entered into or are negotiating fishery agreements, principally with Japan. Do the entities presently have authority to enter into government-to-government relationships?

Yes, with the consent of the U.S. on a case-by-case basis.

2.21.B. What countries have expressed an interest in such agreements and what are the terms of the agreements?

Both the Federated States of Micronesia and the Marshall Islands have concluded government-to-government agreements with Japan regarding development assistance. The Marshall Islands also has a government-to-government fishery agreement with Japan. The fishery agreement provides access to Marshallese waters by an agreed number of Japanese fishing boats. The development assistance agreements concern the granting to the Marshall Islands and the Federated States of Micronesia of project assistance, expertise and funding from Japan. Palau has initiated discussions with the Japanese Government relating to both fisheries and development assistance but has not concluded agreements in these areas.

2.21.C. **What is the fishery zone claimed by the Micronesians?**

Palau, the Marshall Islands and the Federated States of Micronesia all have a 200-mile fishery zone based on legislation which each government has enacted and which has been approved by the Trust Territory High Commissioner.

2.21.D. Does that claim differ from the U.S. position on Law of the Sea and do we enforce the Micronesian claims?

The U.S. also claims a 200-mile fishery zone. The U.S. and Micronesian positions are compatible and will continue to be so under the Compact. We presently enforce the Micronesian fishery zones with available Coast Guard assets.

2.21.E. **Will we under Free Association?**

The Micronesian Governments will be responsible under the Compact for the surveillance and enforcement of their fishery zones. Compact Sections 216(a)(1) and 216(b) provide special assistance for this purpose.

2.21.F. **Are the fishery agreements exclusive?**

No.

2.22.A. What are present and future Japanese intentions in Micronesia and the Pacific generally?

> The Japanese have an important political and economic interest in the Pacific Basin. They pursue their Pacific Basin relationships in a manner consistent with the terms of their mutual security treaty with the U.S. They are a major contributor to regional economic organizations such as the Asia Development Bank and have commenced a bilateral aid program; they seek to promote an atmosphere hospitable to Japanese investment; and their activities have generally been well received by the Pacific Island nations.

2.22.B. What are the present and anticipated future levels of aid to Micronesia from Japan? From other countries?

> Japanese aid arrangements for the Marshall Islands and the Federated States of Micronesia stand now at approximately $2 million. There does not exist a long-range aid plan however. Although not strictly classifiable as aid, guarantees of commercial credits have been extended to the Marshall Islands by Australia and Great Britain to facilitate Marshallese purchase of light aircraft and electrical generators.

2.22.C. What is the position of the Government of Japan with respect to War Claims?

> The Japanese Government takes the position that the 1969 War Claims agreement is dispositive of this issue.

2.22.D. Has the U.S. discussed with Japan methods of resolving the claims issue?

> Yes, as have members of this Committee and the House Committee.

2.23. What would be the U.S. foreign policy assessment of a major deepwater oil storage and transshipment facility in the Northern Marianas? In Palau?

> In the Northern Mariana Islands, we would seek assurance that such a project was welcomed by the local population and that the requirements of applicable U.S. laws were met. In Palau, we would have to assess the impact, if any, of such a facility on our defense and security responsibilities.

2.24. What authority will we have under the Compact of Free Association to control the foreign affairs of the Micronesians? How will we know if the Micronesians are about to take an action to which we might object?

The Compact recognizes the capacity of the Micronesian freely associated states to conduct their foreign affairs subject to the right of the U.S. to determine the compatibility of a proposed action with our security and defense responsibilities. The Compact requires that the Micronesians consult with us in the conduct of their foreign affairs.

2.25.A. What would be our policy if the Soviets or the Chinese attempted to broaden their commercial and economic ties with the Micronesians?

We would have to assess the situation in light of our security and defense responsibilities in the area and make our determination accordingly.

2.25.B. Would our policy differ for the Japanese?

No, though Japan is, of course, our ally.

2.26.A. Will the Micronesians be able to join the United Nations during free association?

No. We do not interpret the provisions of the Compact, under which the Micronesian political entities will not be independent states, as making them eligible to become U.N. member states in accordance with the U.N. Charter. They will, however, in our view, be eligible for membership in some U.N. specialized agencies.

2.26.B. What about the Northern Mariana Islands?

As a territory of the United States, the NMI would not be eligible for U.N. membership.

2.26.C. What if the Micronesians try to join the U.N.?

We would not be able to support their candidacy, and would so advise other nations when asked our position on the matter.

2.27.A. What is the relationship of the United Nations to Micronesia now?

Micronesia is a U.N. Trusteeship which is administered by the U.S. The authority of the U.N. in the territory derives wholly from the 1947 Trusteeship Agreement and the U.N. Charter. Although the TTPI, as a strategic trusteeship, comes under the purview of the Security Council, that body has designated the Trusteeship Council to exercise regular oversight over U.S. administration of the Trusteeship. In the exercise of this responsibility, the Trusteeship Council holds annual session to receive and consider a report from the U.S. on the past years activities and it sends periodic missions to the TTPI to examine conditions there. The Trusteeship Council has, at the invitation of the United States, also sent special visiting missions to the TTPI to observe constitutional referenda and the plebiscite in the Northern Mariana Islands on its future political status. The Trusteeship Council also receives and considers petitions from citizens of the Trust Territory and others. It reports annually to the Security Council.

2.27.B. **What will it be under the new arrangements?**

Once the Trusteeship Agreement has been terminated, the only formal links between Micronesia and the U.N. system will be through the various specialized and regional agencies to which the freely associated states might belong.

2.27.C. **Will we still have to report to the U.N. and let it send visiting missions to the area?**

In our view, following termination of the trusteeship, neither the freely associated states nor the Commonwealth of the Northern Mariana Islands should be considered as non-self-governing territories or be the subject of annual reporting or periodic visiting missions.

2.28.A. **What will be the juridical status of the Free Associated States under International Law?**

International law, to the extent it is codified in such U.N. General Assembly resolutions as 1541 and 2625, recognizes free association as a political status carring a full measure of self-government.

2.28.B. **Will the other nations in the Pacific basin recognize them as independent nations?**

We have no way of determining in advance how any of the nations in the Pacific basin may characterize the international legal status of the freely associated states. We have briefed many of these governments on the concept of free association embodied in the Compact and have had no indication that these governments regard the status of free association as anything more or less than that defined in the Compact.

2.28.C. **How are the heads of each of the governments presently treated?**

As popularly elected chief executive officers of constitutional governments.

2.28.D. **How does the present treatment of the President of the Marshalls by Kiribati differ from the treatment of the Governor of American Samoa by Tonga?**

Pacific Island leaders rarely make distinctions in their treatment of each other which are based on the political status of the islands which they represent. The community of island nations has long comprised entities ranging across the governmental spectrum from dependencies to independent states. The practice among Pacific Island leaders is to deal with one another on an essentially equal footing.

2.28.E. How do the Pacific basin nations treat the Governor of American Samoa? Guam? Northern Marianas? Hawaii?

Our observation is that the leaders of all the Pacific Island polities -- be they other nations, states or territories -- accord each other a very special kind of respect reserved only for Pacific peoples.

2.29. Is it in the long-term foreign policy interest of the U.S. to maintain a close political relationship with the Micronesian entities (including Guam and the NMI) or is our long-term interest better served if we severed all ties and made them independent?

Long-term U.S. foreign policy goals are best served by the maintenance of the closest possible political relationships with the Micronesians. While such a relationship is not necessarily inconsistent with the political status of independence, we believe that the closer the political relationship, the better the chances that U.S. foreign policy interests will be secured. However, the relationship must be entirely voluntary if it is to produce more foreign policy benefits than problems. Free Association represents the closest political relationship which Palau, the Marshall Islands and the Federated States of Micronesia will at present freely accept, and it represents a blending of U.S. and Micronesian needs and interests which has the Micronesians' full backing. Guam is, and the NMI soon will be, fully American areas whose people are U.S. ctiizens. As such, U.S. foreign policy must and does take their interests into account.

2.30. What has been the political history of recently independent island states in the Caribbean and Pacific? What is the likelihood of any of the new Micronesian entities going the route of Grenada? Will that possibility be increased or decreased if we limit federal programs and assistance and opt for independence?

The island nations of the Pacific have proven themselves as stable, respectful of individual rights, democratic, and decidely pro-Western in their foreign policies. In the Caribbean, there has been a greater variation in the political evolution of the island nations, although many have proven stable, democratic and friendly to the West. While the mini-states of the Caribbean and the Pacific share certain characteristics, such as small land areas and limited resources, there are important differences also which derive from historical, cultural and geographic factors. It can thus hardly be assumed that the experience of any one Caribbean state provides a precedent for the future development of the Pacific Island nations. With respect to Micronesia, we believe the likelihood of any of the freely associated states moving radically away from its ties with the U.S. is very small, particularly in consideration of our 35-year history of involvement with them. Further, the Compact of Free Association creates a broad series of political, educational, technical and administrative links which will strengthen with time. By definition, independence would reduce some of these links over time. It would not, however, of necessity mean that the Micronesians had embraced radical political ideologies. In fact, none of the Pacific Island nations has done so.

Section 3

Senate Energy Committee Questions

3.1. Do the Defense Department and the Joint Chiefs support the free association agreement?

In the judgment of DOD and the Joint Chiefs, free association will better serve U.S. defense interests in the long term than would indefinite continuation of the Trusteeship because realistically the U.S. could not maintain a defense presence without the consent of the people concerned.

3.2.A. Why doesn't continuation of the Trusteeship Agreement better serve U.S. defense interests?

Perpetuation of the Trusteeship is not compatible with long-range U.S. security interests in the area because the status quo is unacceptable to most local political leaders. Those leaders are unwilling to continue current arrangements or conclude agreements for any new requirements, e.g., Palau land, absent satisfactory resolution of future political status.

3.2.B. What is the advantage of free association over the present situation from the defense and security perspective?

Micronesian acceptance of Compact of Free Association and its subsidiary agreements on defense matters will provide requisite guarantees for U.S. defense requirements and will have been freely negotiated by the Micronesian Governments and approved by their peoples, rather than imposed upon them.

3.3.A. What is the state of defense posture in the Pacific at present?

Our present posture includes major military forces that can be rapidly reinforced during crises. Current deployments in the Western Pacific include: a squadron of B-52s, the Seventh Fleet (normally one or two aircraft carrier battle groups, one amphibious ready group, and about nine auxiliary ships), ten USAF tactical fighter squadrons, a Marine amphibious force, three maritime patrol aircraft squadrons, an Army infantry division and two squadrons of C-130 cargo aircraft.

3.3.B. Comment also on the condition of the Pacific Fleet.

The Pacific Fleet is capable of conducting theater-wide operations in defense of vital interests of the U.S. in the Pacific Ocean area. Although the continued commitment of a sizeable Pacific Fleet force to the Indian Ocean has greatly strained ship, manpower and support resources, the combat capability of the Pacific Fleet continues to be satisfactory.

3.4. What military installations do we now have in Micronesia? In other Pacific Island areas?

Excluding those in the major rimland nations such as the Republic of the Philippines and Japan, the only military installation the U.S. retains is the Kwajalein Missile Range in the Marshall Islands.

Military installations on U.S. territories include the following:

-- Guam:

- Major Navy activities include Naval Air Station Agana and various logistic and support facilities.

- Major Air Force activity centers on Andersen Air Force Base which hosts a squadron of B-52s.

- There are no major Army or Marine Corps facilities on the island.

-- Johnston Island: U.S. chemical storage site.

-- Midway Island: Small naval air facility.

-- Wake Island: Small airfield run by USAF.

3.5.A. What is the effect of U.S. relinquishment of claims to disputed Pacific Islands on our security objectives in the Pacific?

There has been no effect. No active installations were involved. The facilities on Canton Island cannot be made available to third parties for military purposes without U.S. agreement. In the treaty with Kiribati, the U.S. and Kiribati agree to consult on matters of mutual concern and interest in time of need and, in particular, to promote social and economic development, peace and security in the Pacific region. It is specifically provided that there shall be such consultations regarding any military use by third parties of the islands to which the U.S. has relinquished claims. In the treaty with Tuvalu, the U.S. and Tuvalu make a similar agreement to consult regarding security in the South Pacific, concerning any requests the U.S. may make for the use of Tuvaluan territory for military purposes in times of crisis and regarding any proposed use of Tuvaluan territory for military purposes by third parties. The remaining islands are in territories administered by or freely associated with New Zealand and thus our security interests in these islands are covered by the ANZUS pact.

3.5.B. Why did the U.S. relinquish our claims to Canton?

The Department of Defense had no requirement for further use of facilities on Canton and already planned to close them permanently. This was done on 1 July 1979.

3.5.C. Has the study to investigate alternatives to Kwajalein been completed?

(SEE CLASSIFIED ENCLOSURE: QUESTION 4.22)

3.5.D. The decision to release Canton was therefore made prior to completion of the study?

That decision was made in October 1978 because there was (and is now) no military requirement for Canton which would justify the annual expenditure of over $4 million required to maintain the facility on a stand-by basis in anticipation of a possible future requirement. U.S. use of Canton at that time was under a 1970 agreement with the U.K. which would have expired in 1980.

3.6.A. What are overall U.S. security and defense objectives in the Pacific area?

The basic premise of our security policy is that we have vital interests and solemn commitments in Asia and the Pacific. The pursuit of these interests and the maintenance of these commitments involve the following objectives:

- the maintenance of sound U.S.-Japanese relations as the keystone of our efforts in Asia.
- improvement of our security posture through better relations with China.
- coordination of the efforts of our friends and allies to limit Soviet expansion in East Asia.
- the maintenance of a credible deterrent on the Korean Peninsula.
- the promotion of a stable system of independent nation states in Southeast Asia and the Western Pacific.

3.6.B. What requirements are placed upon us as concerns protection of communications and trade lines?

Our naval and air forces have the mission of keeping the sea lanes open in the Pacific and in particular the sea links that connect the Persian Gulf with our friends and allies in the Far East.

3.6.C. Is there any strategic transport -- say of oil -- through Micronesia?

Our important trade with Southeast Asia, including oil transport, passes through northern Micronesian waters. Moreover, these island chains are strategically positioned to influence the critical oil routes connecting Japan and the Persian Gulf.

3.6.D. What do we do to protect this?

We maintain military forces and the necessary support facilities in the Western Pacific.

3.7. If either Palau or the NMI were to construct a deepwater seaport for the storage and transshipment of oil, how would U.S. security and defense obligations be altered?

There would be no direct effect on the defense of the United States, but such a development would heighten U.S. concern about the security of the area, particularly if storage were in support of obligations undertaken by third countries pursuant to international agreements or if the obligations of the United States to third countries were to come into play.

3.8.A. What are Soviet intentions in Micronesia from a military and security perspective?

(SEE CLASSIFIED ENCLOSURE)

3.8.B. How would the new status arrangements in Micronesia affect our relative position?

There would be no diminution of our security position since the U.S. would retain full authority and responsibility for defense of Micronesia. Under the Compact of Free Association and its subsidiary agreements however, we would gain use rights to land for military use which we do not now enjoy.

3.9.A. What is our policy with respect to the transit of nuclear powered warships through Micronesia?

The U.S. has complete operational freedom and operates its warships without differentiation or limitation regarding propulsion systems or armament.

3.9.B. How will the free association agreement affect this?

It will leave the present situation unchanged.

3.9.C. What is the effect of the nuclear prohibition provisions of the Palau and FSM constitutions on our defense posture?

The provisions have no present effect, since local Micronesian governments cannot limit U.S. powers under the Trusteeship. At the time the Compact was initialed, both Palau and the FSM also entered into separate agreements with us on the nuclear issue. These agreements have the effect of neutralizing the constitutional provisions for the period of free association, thus preserving the status quo.

3.9.D. Would those provisions prohibit stationing or transit of Polaris or Trident Submarines?

Standing alone, yes; but not if they had been modified as set forth in the answer to Question 3.9.C.

3.10.A. What are the precise military land requirements in the Trust Territory, where, why do we need them, what do we plan to do there, and when?

Military land requirements in the TTPI fall into three geographic groupings: (1) the Northern Mariana Islands (NMI), (2) Kwajalein Missile Range (KMR) in the Marshall Islands and (3) Palau.

- The NMI lease options:

-- Two-thirds of Tinian Island (17,799 acres);

-- A portion of Saipan harbor (177 acres); and

-- The island of Farallon de Medinilla (206 acres).

The option set out in the NMI Commonwealth Covenant is for a lease for 50 years, renewable for another 50, at no additional cost. It will provide for contingency basing should our Pacific strategy so require.

- Kwajalein Missile Range (KMR):

-- This is a key part of the DOD Pacific range and test facility base. Unique capabilities, both geographic and technical, enable KMR to support strategic offensive missile, ballistic missile defense and space defense testing.

-- In the post-trusteeship period, we want to retain use rights as to 1,320 acres of land, plus the mid-atoll safety corridor and unfettered installation use rights.

- Palau:

-- These following use rights are required for contingency training and logistic-support purposes:

-- Babelthuap: 2000 acres for exclusive use as a base support complex and an adjoining 30,000 acres for non-exclusive use for intermittent ground force training and maneuvers.

-- Joint use of the Airai and Anguar airfields.

-- Access and anchorage rights in Malakal Harbor with rights to acquire and improve 40 acres of submerged land and adjacent fastland.

3.10.B. Have the governments agreed to your requirements?

Yes, with the initialing of the Compact. We have further initialed a military use and operating rights agreement with Palau and will seek the same with the Marshall Islands and the FSM. The NMI land-use option is contained in the Commonwealth Covenant.

3.10.C. How much do these cost?

We will not pay direct rent for land in either Palau or the Marshall Islands. In the case of the Marshalls, the Compact, in Section 213(b), contains an annual impact payment of $1.9 million. As to Palau, we have included a one-time impact payment of $5.5 million in Section 213(a). Costs to the U.S. for land use past the 15th year will be determined at the time depending on the level of U.S. use.

3.10.D. If these options are not available, what would be the effect on the Compact?

We have secured these options which we view as an integral part of the free association package.

3.10.E. During the debate in the Northern Marianas, considerable attention was drawn to the military land option requirements yet once the covenant was approved you did not seek funding to exercise the option until forced by the Mariana Islands and Congress. Are these land requirements just as illusory?

Like any other budget item, the NMI lease option competed for funds in the budget process. In FY 81, although the former Administration's budget included the lease funding, Congressional problems were encountered. This Administration's FY 82 budget request includes funding for exercise of the options and reflects our strong interest in executing the lease.

3.11.A. What is the relationship of Palau and the Northern Mariana Islands to our bases at Clark and Subic?

One of the prime reasons for the TTPI lease options is to provide the potential for at least a partial alternative in the event of restrictions on U.S. use of or access to allied facilities in the Western Pacific, including Clark and Subic in the Philippines.

3.11.B. Are they or Guam or any part of the current TTPI being considered as a fallback area to the Philippines?

The basing options in Palau and the Northern Mariana Islands, together with existing facilities in Guam, provide us with greater flexibility should any changes in our Pacific strategy be necessary.

3.12. We now have major military installations at Guam. Why do we need more in Micronesia?

Population pressure and economic development sharply limit the land available on Guam for any future significant expansion of current U.S. military facilities. Guam cannot be used as an alternative to the Kwajalein Missile Range, provide a 30,000-acre training area, or be used as a gunnery range, and is operationally farther than Palau from strategically important Asian areas. Military facilities both on Guam and in Micronesia could be significant as partial alternatives to present U.S. bases in the Western Pacific.

3.13. What would happen to our defense and security objectives in the area if Palau or another part of Micronesia became independent?

Independence, per se, would not necessarily diminish the chances of achieving U.S. security objectives in the region. However, it would be necessary to insure that the U.S. attains its defense and security objectives by treaty. While this would certainly be possible, there can be no doubt that the closer political relationship set forth in the Compact of Free Association would foster long-term U.S. defense and security interests.

3.14.A. The Administration has objected to the Palauan constitution which is now scheduled to come into effect on January 1, 1981. These objections have been based on its inconsistencies with the U.S. defense authority under the proposed free association agreement. What is the basis for these objections, what will happen if this constitution comes into effect and have the Palauans agreed to change it?

We initially pointed out to the Palauans that certain provisions of their draft constitution were incompatible with the U.S. defense and security authority under free association. By negotiating and initialing separate agreements, these obstacles were overcome. No changes in the constitution were required; the separate agreements, once approved, will have the effect of neutralizing certain of the constitution's provisions during the free association period.

3.14.B. How do these provisions differ from those in the FSM constitution?

Both the FSM and Palau constitutions contain elements which are incompatible with free association in a similar fashion, i.e., on maritime jurisdiction and nuclear materials. The two constitutions differ in the procedure necessary to bring their incompatible portions into harmony with free association. The FSM Constitution allows the FSM government to delegate powers of government to the United States. The Palau Constitution specifies that certain of its provisions can be limited only by treaty or by the people in a special vote. Therefore, the separate agreements with Palau and the FSM on the maritime jurisdiction and nuclear issues were designed to meet the differing procedural requirements.

3.14.C. How does Section 314 of the Compact relate to this issue?

Section 314 of the Compact is designed to provide certain safeguards to the freely associated states regarding the use of nuclear, radioactive, chemical and biological materials while providing the U.S. with necessary operational flexibility. The separate agreements remove any incompatibility between the Palau and FSM Constitutions and Section 314.

3.15.A. The committee has heard that we will be closing our Polaris Submarine Base in Guam. Will Micronesia be used in conjunction with any of our submarine or antisubmarine warfare programs?

The Navy does not currently plan to develop or employ any facilities in Micronesia for use in submarine or antisubmarine warfare. However, should the current Pacific basing structure be altered or the strategic situation in the Pacific Ocean area undergo significant changes, airfields and harbors located in Micronesia would be among the facilities considered if there were a need to develop suitable alternative or supplementary support areas for U.S. naval forces.

3.15.B. What restrictions are in the Compact which would affect this?

None. All U.S. warships, including submarines, will enjoy full freedom of movement throughout Micronesian waters. U.S. defense rights under the Compact are not limited with respect to submarines by the provisions of Section 314.

3.16. What is the relationship of the security and denial provisions of the Compact to the levels of federal assistance? Will the U.S. security interests be at hazard subject to annual budgetary process? If the U.S. fails to appropriate the full level of

specified assistance, will we be in breach of the Compact and what remedies do the Micronesians have? Would a pledge of Full Faith and Credit on the U.S. assistance have ensured U.S. security interests under the Compact? Why did we provide Full Faith and Credit to the Northern Mariana Islands when our National Security interests were already protected by the extension of sovereignty and not here where we will not exercise sovereignty?

> The initialed Compact of Free Association contains a full faith and credit clause similar to that of the NMI Covenant. Therefore, U.S. security authority set forth in the Compact will not be at hazard in the fashion contemplated in the question.

Section 4

Senate Energy Committee Questions

4.1. What precisely are your negotiating instructions with respect to political status, defense and security interests, economic and financial aid and Federal programs?

(SEE CLASSIFIED ENCLOSURE)

4.2. Last summer the U.S. made a revised financial offer to the Micronesians. Could you explain how much we have offered, what the Micronesian response has been to this offer and if you have authority to offer any additional financial support?

The economic assistance provisions of the initialed Compact are set forth in Title Two. An illustrative funding stream for the first fifteen years is displayed in the attached table (Table 3). We have not yet finally negotiated the level of U.S. program support in the health and education area but have informed the Governments of Palau, the Marshall Islands and the Federated States of Micronesia that the Administration will not support assistance under Compact Section 221(b) in excess of $12 million annually. The Administration also informed the FAS negotiators in October, 1981 that although it can support the economic assistance levels contained in the Compact, it will not be able to support levels in excess of those amounts.

4.3. Will this financial offer along with local revenues be sufficient to keep the Micronesians solvent?

We believe that the economic assistance package of the Compact, when supplemented by local revenues, user charges and other government receipts, should prove adequate if it is shepherded wisely and used pursuant to development plans which emphasize investment, maintenance and private sector growth.

4.4. What sort of provisions have been made to account for inflation?

Section 217 of the Compact provides for inflation adjustment in the following way:

-- $^2/_3$ of the percentage annual change in U.S. Gross National Product Implicit Price Deflator, or 7%, whichever is less in any one year, is the adjustment factor for each year;

-- The base year for computation under the formula is 1981;

-- When a specific year's adjustment factor is determined, it is added to the adjustment factor of each of the previous years and then applied to the base funds for the year in question;

-- Only Compact grant funds are adjusted.

4.5. Why are we offering most of the U.S. support in cash grants and only a relatively small amount in specific Federal programs?

This is both the Micronesian and the U.S. preference. Primarily, it is believed that the dependency-creating aspect of Federal programs should be replaced by provision to the Micronesian Governments of cash assistance to run their own operations and programs in accordance with locally written and U.S. approved national development plans. Federal programs, which are conceived and designed for domestic U.S. consumption have generally proven ill-suited in less developed island settings.

4.6. What was the rationale for the level of U.S. grants to decrease over the 15-year period?

The gradual decrease in U.S. funding over the fifteen-year period reflects our joint intention with the Micronesians to assist them in establishing a productive economic sector in the early years of free association and then to gradually decrease their economic dependency on U.S. aid.

4.7. What specific Federal programs are we offering the Micronesians and why? Do you have authority to offer additional programs?

In Section 221, the Compact specifies the continuation of the services of the U.S. Postal Service, the Weather Service, the Federal Aviation Administration, the Civil Aeronautics Board and the Federal Emergency Management Administration and the continuation of any alternative energy activities at the levels prevailing in the year prior to termination of the Trusteeship Agreement. It also states that details on the levels of health and education programs which will be extended are to be specified in a separate agreement. We do not intend to offer additional Federal programs.

4.8. What was the basis within the Executive Branch for formulating your financial offer?

The overall amounts were determined by an Interdepartmental Group and its judgments were based on calculations of what the U.S. could expend given competing demands for the federal dollar and with special regard for Micronesian needs.

In this review, Micronesian needs were measured against competing demands on the Federal resources. In terms of the split between Palau, the Marshalls and the FSM, a formula was developed with four "weights" -- population, constant known needs for government services, consideration of other Federal assistance, and local revenue-producing potential. In fact, there is essential per capita equivalence between the three entities.

4.9. Why have you offered the FSM and the Marshalls cash grants for economic development and a package of infrastructure projects to Palau?

Our initial approach had been to apply the general cash grant formula to all three FAS Governments for both operations (the current account) and economic development/construction projects (the capital account). The Palauans, however, felt that a U.S.-managed infrastructure program would best meet their economic development needs and, after consideration, we agreed.

4.10. Will the Micronesians be obliged to expend any set amount of the U.S. grant on economic assistance, and if so how much?

The Marshall Islands and the FSM are each required in Section 211 to spend not less than 40% on development (the capital account). In the case of Palau the infrastructure program covers this point. The Comprehensive Development Plans which the entities are to submit will be the basis for grant allocations.

4.11. The Compact makes reference to Economic Development Plans. Who will prepare and approve the plans?

Section 211 of the Compact provides that each FAS is to produce an Economic Development Plan. This is being done now by the governments. The plans must be concurred in by the U.S.

4.12. What guarantee will the U.S. have that the grant funds are being spent in the proper areas?

First, the Compact gives the U.S. the authority to audit the funds. Second, each FAS is required to make an annual report to the President and the Congress on its use of the funds. Third, additional information and detail will be available to the Congress each year as part of the appropriation process.

4.13. When you mention funds being spent for "Current Account" purposes, what does this include?

This covers generally the cost of administration of government and its recurring programs.

4.14. How are the basic U.S. defense objectives in the Pacific integrated into the negotiations?

U.S. policy and strategy for the negotiations is determined by an Interdepartmental Group which in turn reports to the National Security Council. In this way, the various interests and objectives of the Federal Government are integrated into our policy. Both DOD and JCS are represented on that group as well as on the U.S. negotiating delegation.

4.15.A. What role has DOD and the Military played in the interagency deliberations on Micronesia?

There are two military officers on the OMSN staff. OMSN is in daily contact with OSD and JCS, both OSD and JCS are represented at all Interdepartmental Group and Interdepartmental Working Group meetings. No decisions, major or minor, which affect DOD and JCS interests, directly or indirectly, have been taken without DOD/JCS clearance or coordination.

4.15.B. Has CINCPAC been brought into the negotiations?

CINCPAC views have been regularly sought and incorporated in developing JCS positions on issues, and CINCPAC representatives have participated in the negotiating rounds. In addition, CINCPAC is regularly briefed on the progress of the negotiations.

4.16. Are our military objectives in the Pacific being subordinated to our goal of quick termination of the Trusteeship?

No, on the contrary, the Compact is designed to protect and further these objectives. The Trusteeship will not be terminated unless all U.S. defense interests are accommodated, and until formal agreements covering foreseeable military land requirements and related operating rights have been concluded.

4.17. The Administration has put forth a goal of Trusteeship termination in 1981, is this realistic?

The last Administration had set a goal of terminating the Trusteeship Agreement in 1981. This Administration concluded in its policy review that United States interests are best served with termination of the Trusteeship Agreement as early as possible. We will not allow the Trusteeship Agreement to be terminated, however, until the negotiations are concluded to our satisfaction and that of the Micronesian Governments.

4.18. What will be the political impact if you do not meet this 1981 goal (both on the U.S. and the Micronesians)?

This Administration has informed the Micronesian Governments that it desires termination of the Trusteeship Agreement as early as possible after completion of the negotiations and approval of the

4.23.D. How many times has KMR been closed and threatened to be closed by Micronesians?

KMR has never been closed by Micronesians. Two periods of operational restriction resulted from Marshallese occupations of KMR islands during 1978-79. Threats to close KMR by individual Marshallese and special-interest groups have been made during the past three years but have not resulted in any coordinated action.

4.23.E. Does the present Marshallese Government represent the KMR landowners?

Yes, for purposes of external negotiations. In anticipation of the Compact and in view of delegation of powers to the Marshallese Government by the Interior Department in 1979, we have dealt with that Government on all KMR issues, particularly the supplementation of the one-time payments under the old long-term leases by an annual payment schedule under the 1979 and 1980 Interim Use Agreements. The landowners have actively participated with the Marshallese Government in the formulation of its negotiating position.

4.24.A. If an agreement cannot be reached with FSM, Palau and the Marshalls by 1981, what are your plans for the Northern Marianas?

With the initialing of the Compact and the resumption of negotiations by this Administration in October of 1981, we and the Micronesian Governments are making steady progress in the negotiation of the remaining subsidiary agreements. We believe that Trusteeship termination is near enough as to not unduly retard the progress of the Northern Mariana Islands in its assumption of US territorial status. We have stated that we will seek termination of the Trusteeship Agreement simultaneously for all parts of the Trust Territory, including the Northern Marianas.

4.24.B. Would creation of citizenship be inconsistent with the Trusteeship Agreement?

The U.S. is obliged under the Trusteeship Agreement to "take the necessary steps to provide the status of citizenship of the Trust Territory for the inhabitants of the Trust Territory." Therefore, for example, the section of the Commonwealth Covenant which grants United States citizenship to the people of the Northern Mariana Islands could not be made effective until the Trusteeship Agreement is terminated.

4.25. Could not the Compact have been negotiated with considerably less detail?

Yes. That was the original USG goal. However, during the course of these four-way negotiations a myriad of specific issues arose at the initiative of one or another of the parties and had to be dealt with in the Compact or one of its subsidiary agreements. Thus, as the negotiations developed, the parties did not regard simplicity and avoidance of detail as a more important objective than adequate coverage of details significant to the overall functioning of the new relationship. There is, however, an advantage in the Compact's detail since it reflects the fact that a large number of issues which are likely to arise during the course of the relationship have been anticipated and provided for, with resultant increased predictability.

4.26. **Why, since there are now three distinct political entities, could you not conclude three separate agreements and submit them together?**

We believed during the negotiations that there should be uniformity in the provisions of the Compact as it relates to all three freely associated states for two central reasons. First, management of the relationship will be vastly facilitated by uniformity. Secondly, uniformity in their relationships with the U.S. may carry the seeds of an eventual political or administrative reunification or federation among the Micronesians, should they desire it. Any delays in the negotiation process which this may have caused were minimal.

4.27. **What has been the input of the House on the various provisions?**

During the negotiating process, we have held regular and numerous consultations with House and Senate committee members and staff. Several provisions of the initialed Compact had their origins in proposals put forward by Congressional members and staff.

4.28. **Doesn't the combination of Federal programs and authority to seek additional assistance make the new entities much like the Northern Marianas except for sovereignty and citizenship? With the extension of Federal domestic programs and authorizations, have your reconsidered the U.S. position and reoffered the Micronesians a territorial status along the lines of the eleven point proposal which they offered in 1969 with a provision for unilateral termination or renegotiation of their status?**

There are numerous features of the free association relationship which mirror the political arrangement existing between the United States and its territories. In fact, the Compact contains provisions under which the freely associated states will be treated, in particular instances, as though they were United States territories. The free association relationship also contains some elements, such as a recognition of Micronesian foreign affairs capacity, which are not consistent with our territorial relationships which themselves are based on U.S. sovereignty. We have not, since 1971, seriously discussed a territorial relationship with the Micronesians because they made it clear that they did not wish to pursue it. For our part, we concluded that the fulfillment of our own national objectives could be achieved more readily and with less friction through free association than through territorial status.

Section 5

Senate Energy Committee Questions

5.1. In brief, what are the basic U.S. political objectives in these negotiations?

> Our political objectives have been to create a friendly, enduring and stable relationship between the future freely associated states and the United States, to fashion our future relationship in such a way that it contributes positively to the overall stability and political environment in the area, and to protect and preserve our defense interests in the central Pacific. A criterion for success is that the Compact relationship be acceptable to both parities and be able to survive any political instability in FAS.

5.2. Do our political, security and humanitarian objectives complement each other or is there a potential conflict in satisfying them all?

> There is no conflict. In fact, the Compact of Free Association, which we believe will firmly secure our political and security objectives in the area, provides the Micronesian peoples and Governments with the economic resources they need to shoulder the burdens of social and educational development. The fact that the freely associated states will be fully self-governing fulfills our most significant humanitarian objective.

5.3. What guarantees will we have that the peoples of Micronesia really desire free association with the U.S.?

> The primary guarantee will be the approval of the Compact in a free plebiscite by the Micronesian peoples.

5.4. Will the interests of minorities be protected in post-trusteeship Micronesia? How has this figured into the U.S. negotiating strategy?

> Each of the Micronesian constitutions contains guarantees of freedom and protection for minorities. The freely associated states reaffirmed their commitment to these principles in the preamble of the Compact.

5.5. Was commonwealth or independence status considered as an option to free association?

> Both have been considered, but neither meets the negotiating objectives of both sides so precisely as Free Association.

5.6. The cultural heritage of the Micronesians is extremely fragile. Has protection of this heritage been a factor in U.S. objectives in the negotiations?

> Yes. The full measure of Micronesian self-government recognized by the Compact is designed in large part to

allow the peoples and Governments of Palau, the Marshall Islands and the Federated States of Micronesia the freedom and ability to protect their cultural identities and heritage.

5.7. What provisions have been made to protect the Micronesian environment (both on the part of the U.S. and the Micronesians)?

U.S. activities in the area must comply with environmental standards substantively similar to those required by U.S. law (taking into account the particular island environment). The freely associated state governments must set equivalent standards for their own activities.

5.8. If the U.S. provides basic human services which would be of benefit to the Micronesians, such as the Public Health Service, why do you not want to provide those services in lieu of cash grants?

Our joint effort with the Micronesians has been to design an economic support package which can engender services tailored to the specific and sometimes unique needs of the Micronesians. Most Federal programs do not meet this criterion.

TABLE 1.

Schedule of Appropriations and Expenditures by function for the period 1947 thru 1981 (In thousands of Dollars)

	Health	Education	Economic Development	Communication Transportation	General Administration	Other 1/	Total	Construction	Total
1947	-	-	-	-	-	1,000	1,000	-0-	1,000
1948	-	-	-	-	-	1,000	1,000	-0-	1,000
1949	-	-	-	-	-	1,125	1,125	-0-	1,125
1950	-	-	-	-	-	793	793	-0-	793
	-	-	-	-	-	3,918	3,918	-	3,918
1951	-	-	-	-	-	1,031	1,031	-	1,031
1952	648	392	118	690	995	1,228	4,271	-	4,271
1953	716	100	339	1,586	1,067	1,116	5,224	-	5,224
1954	539	[illegible]	282	1,585	1,315	271	4,300	-	4,300
1955	505	[illegible]	274	1,066	1,724	460	4,300	700	5,000
	2,407	[illegible]	1,013	4,927	5,101	8,024	23,044	700	23,744
1956	405	[illegible]	375	1,240	1,879	73	4,300	700	5,000
1957	525	411	540	1,095	936	493	3,900	900	4,800
1958	483	[illegible]	425	1,965	899	1,870	5,250	900	6,150
1959	545	543	463	1,016	969	426	3,962	900	4,862
1960	511	[illegible]	410	1,064	390	997	4,375	850	5,225
	4,376	[illegible]	3,426	10,317	10,674	11,863	44,831	4,950	49,781
1961	584	[illegible]	451	1,164	930	1,113	4,750	1,175	5,925
1962	601	[illegible]	492	1,525	1,065	562	4,754	1,350	6,104
	6,061	[illegible]	[illegible]	13,006	12,669	13,538	54,335	7,475	61,810
1963	934	963	806	2,645	1,764	706	7,758	7,242	15,000
1964	1,460	1,329	1,180	1,237	1,969	1,285	9,000	6,000	15,000
1965	1,872	3,531	1,083	2,553	2,745	1,717	13,501	3,999	17,500
1966	2,170	3,366	1,409	2,338	2,761	1,563	14,107	3,340	17,447
1967	2,724	3,925	1,753	2,681	2,932	2,612	16,657	2,537	19,194
	15,161	[illegible]	10,662	24,460	[illegible]	21,441	115,358	30,593	145,951

Trust Territory of the Pacific Islands
Schedule of Appropriations and
Expenditures by function for
the period 1967 thru 1981
(In thousands of Dollars)

	Health	Education	Economic Development	Communication Transportation	General Administration	Other	Total	Construction	Total
1968	3,319	4,701	2,152	445	3,597	5,277	19,131	11,069	30,200
1969	3,779	5,323	3,223	[illegible]	3,263	3,953	20,506	9,494	30,000
1970	4,341	6,823	3,273	2,087	4,955	6,986	28,465	19,647	48,112
1971	5,413	8,644	3,770	2,525	3,859	10,130	34,541	25,323	59,864
1972	6,175	11,077	4,704	3,057	4,182	10,145	39,340	20,660	60,000
	38,187	55,742	[illegible]	33,840	43,886	57,932	257,341	116,786	374,127
1973	7,071	12,021	4,219	3,412	4,800	12,142	43,665	16,335	60,000
1974	7,657	12,881	6,327	3,543	5,455	17,213	49,876	9,510	59,386
1975	8,851	12,868	[illegible]	3,448	[illegible]	16,249	54,942	14,807	69,750
1976	9,633	14,449	[illegible]	3,654	6,452	49,221 2/	79,029	[illegible]	104,578
1977	7,946	12,527	[illegible]	3,848	6,305	34,678 3/	71,045	33,672	101,717
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	175,035	557,399	213,659	769,553
1978	7,735	12,777	[illegible]	4,795	5,936	46,949 4/	93,654	34,012	117,666
1979	7,779	12,323	5,260	4,673	5,763	20,468 5/	56,266	58,440	114,706
1980	7,581	11,416	4,882	6.098 7/	5,481	20,730 6/	56,188	57,700	113,888
1981	8,461	11,949	4,002	5,634	6,561	30,721 8/	67,328	27,194	94,522
TOTAL	110,061	168,943	77,107	73,152	96,169	293,903	819,335	391,005	1,210,340

NOTES

1/ The major function included in this category are:

- Public Works
- High Commissioner/Judiciary
- Legal & Power Safety
- Public Affairs

Public Works funds begin increasing in FY 1969 from $4,000,000. to over $8,000,000 per year in 1974.

2/ This amount includes:

- Transition of quarter budget	$16,000,000
- Economic Development Loan Fund	1,000,000
- Bikini Ex-Gratia Payments	3,000,000
- Transition funds - GNMI	1,500,000
Total	$21,500,000

3/ This amount includes:

- Funds for NMI	$12,000,000
- Radiological Survey	2,600,000
- Enewetak	4,000,000
Total	$18,600,000

4/ This amount includes:

- Enewetak	$ 8,400,000
- Radiological Survey	3,800,000
- Rongelap & Utirik Compensation	1,700,000
- Human Development - Majuro	900,000
- Funds for Northern Mariana Islands	16,100,000
Total	$30,900,000

5/ This amount includes:

- Bikini Rehabilitation	$ 6,000,000

6/ This amount includes:

- Enewetak Rehabilitation	$1,450,000
- Kwajalein Atoll	1,300,000
Total	$2,750,000

7/ This amount includes special money for communications system upgrade	$1,925,000
8/ This amount includes special operations and maintenance	$3,000,000

Trust Territory of the Pacific Islands
Schedule of total dollars by function
and % of these dollars to total funds by function
for period 1947 to 1967, 1968 to 1978 and 1979 to 1981

(In thousands of dollars)

	1947 to 1967 $	1947 to 1967 %	1968 to 1978 $	1968 to 1978 %	1979 to 1981 $	1979 to 1981 %	Total $	Total %
Health	$ 15,161	14	$ 71,079	65	$ 23,821	22	$ 110,061	100
Education	18,974	11	114,281	68	35,688	21	168,943	100
Economic Development	10,602	14	52,361	68	14,144	18	77,107	100
Communication/Transportation	24,460	33	32,287	44	16,405	22	73,152	100
General Administration	24,720	26	53,644	56	17,805	19	96,169	100
Other	21,441	7	200,543	68	71,919	24	293,903	100
Total	$115,358	14	$524,195	64	$179,782	22	$ 819,335	100
CIP	$ 30,593	8	$217,078	56	$143,334	37	$ 391,005	100
Total Funds.	$145,951	12	$741,273	61	$323,116	27	$1,210,340	100

CONSTRUCTION MONIES

(In thousands of Dollars)

Period	(No. of Years)	$	%
1947 to 1967	21	$ 30,593	8
1968 to 1978	11	217,078*	55
1979 to 1981	2	143,334	37
TOTAL	34	$391,005	100

*In recent years, the funds have been used for:

1. Transportation & Communication
   Building of airports, docks, harbors, roads, and purchase of ships
2. Water, power, and sewer projects
3. Construction of schools, hospitals, and dormitories

Trust Territory of the Pacific Islands
Summary of Appropriations and Expenditures
by function (1947 thru 1981)
and % of Total
(In Thousands of Dollars)

	$	%
Health	$ 110,061	9
Education	168,943	14
Economic Development	77,107	6
Communication/Transportation	73,152	6
General Administration	96,169	8
Other	293,903	24
Total Operation	$ 819,335	68
CIP	$ 391,005	32
Total Funding	$1,210,340	100

Table 2.

MAJOR ECONOMIC OR ECONOMIC RELATED STUDIES COMMISSIONED BY THE U.S. GOVERNMENT AND TRUST TERRITORY GOVERNMENT ON TRUST TERRITORY OF THE PACIFIC ISLANDS SINCE 1946

Note: (During U.S. Naval Administration of the TTPI, 1946-51, considerable sums were expended by the U.S. Navy in logistic support for the hundreds of scientific studies that were conducted during this period. Monetary costs of this support is difficult to arrive at but in most cases it far exceeded actual expenditures by other Government agencies and participating institutions.)

1946. "Economic Survey of Micronesia"
By U.S. Commercial Company, a subsidiary of the Reconstruction Finance Corporation.

Support costs by U.S. Navy........	$250,000
Reconstruction Finance Corp.......	$250,000
	$500,000

(This study produced 20 volumes on geography, botany, soils, water resources, studies on economy of each district, livestock surveys, nutrition, mineral resources, etc. Over 25 scientists participated on a full-time basis.)

1946-1951. Mapping & Geological Survey

(Project mapped Ex-Mandated Islands, geological surveys, mineral resources, soils, etc. A six-year program supported by U.S. Naval Research, War Department, U.S. Army, Corps of Engineers, U.S. Geological Survey.)

Estimated cost of 6-year program to U.S. Government.............	$1,000,000

1948. Fisheries Studies

Supported by Fish & Wildlife, U.S. Navy
U.S. Public Health Services

Estimated costs to participating Government agencies............	$300,000

1948. School of Naval Administration Handbook

Produced under U.S. Navy auspices.

Estimated cost..........	$125,000

1947-1948. CIMA PROJECT. "Co-ordinated Investigation of Micronesian Anthropology.

(43 scientists were involved and 35 major reports produced.)

Grant from Office of Naval Research.	$100,000
Support costs to U.S. Navy..........	$250,000
Support costs to Participating Government agencies and institutions..	$350,000
Estimated cost..........	$700,000

1949-1951. SIM PROJECT "Scientific Investigation of Micronesia."

(Over 20 scientists involved and 25 major reports produced on reef studies, hydrology, marine ecology, botany, forestry, soils & agriculture, geology, geography, etc.)

Support costs from U.S. Navy.....	$250,000
Grants & U.S. support from Participating institutions......	$250,000
Estimated cost.........	$500,000

1947-1951. ICCM PROJECT "Insect Control Committee for Micronesia Research Projects

(Over 15 scientists participated. 20 major reports produced on control of insects, etc.)

Support from U.S. Navy...........	$100,000
Pacific Science Board............	$200,000
Estimated cost.........	$300,000

1948-1950. CCM PROJECT "Conservation Committee for Micronesia"

(Reports and research on conservation, effects of phosphate mining, groundwater studies, etc.)

Pacific Science Board Department of Agriculture, Interior, etc... $100,000
Support costs by U.S. Navy....... $100,000

Estimated cost........... $200,000

1951. "Planning Micronesia's Future"

(Team of experts prepared analytical summary of U.S. Commercial Company's Economic Survey of Micronesia.)

Estimated cost........... $50,000

1952. "An Economic Perspective of the TTPI" by Donald J. O'Connor

(Commissioned by TTPI Government.)

Estimated cost............ $10,000

1954. "Commercial Problems in the TTPI Following Termination of the Island Trading Company" by Stanford Research Institute

(Commissioned by High Commissioner.)

Estimated cost............. $25,000

1963. SOLOMAN REPORT

(Report by the U.S. Government Survey Mission to the TTPI) Vol. I-III. (Vol. I classified.) (Vol. II. The Economic and Social Development of Micronesia)

Estimated cost to U.S. Government............... $300,000

1966. THE NATHAN REPORT: Economic Development Plan for Micronesia, 3 volumes

(Done on contract for TTPI.)

Estimated cost.... $250,000

1968-73. PLANNING PROJECTS. Hawaii Architects & Engineers

(Done on contract to TTPI Government. 10 volumes, 7 on Districts, 3 on Sub-districts.)

Cost to TTPI...... $750,000

TOTAL ESTIMATED COSTS OF ABOVE STUDIES............ $5,000,000

TABLE 3.

$MILLIONS FY 19	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	TOTAL
PALAU																
CURRENT ACCOUNT	14.15	9.15	9.15	9.15	9.15	9.15	9.15	9.15	9.15	9.15	8.15	8.15	8.15	8.15	8.15	137.25
CAPITAL ACCOUNT	9	9	9	9	9	1	1	1	1	1	1	1	1	1	1	55
[SUBTOTAL]	23.15	18.15	18.15	18.15	18.15	10.15	10.15	10.15	10.15	10.45	9.15	9.15	9.15	9.15	9.15	192.25
MARSHALL ISLANDS																
CURRENT ACCOUNT	18.9	17.9	17.9	17.9	17.9	15.6	15.6	15.6	15.6	15.6	13.8	13.8	13.8	13.8	13.8	237.5
CAPITAL ACCOUNT	10.5	10.5	10.5	10.5	10.5	8.0	8.8	8.8	8.8	8.8	7.6	7.6	7.6	7.6	7.6	134.5
KWAJALEIN IMPACT	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	28.5
[SUBTOTAL]	31.3	30.3	30.3	30.3	30.3	26.3	26.3	26.3	26.3	26.3	23.3	23.3	23.3	23.3	23.3	400.5
FSM																
CURRENT ACCOUNT	42.6	39.6	39.6	39.6	39.6	34.6	34.6	34.6	34.6	34.6	27.6	27.6	27.6	27.6	27.6	512
CAPITAL ACCOUNT	24	25	25	25	25	21	21	21	21	21	17	17	17	17	17	314
[SUBTOTAL]	66.6	64.6	64.6	64.6	64.6	55.6	55.6	55.6	55.6	55.6	44.6	44.6	44.6	44.6	44.6	826
GENERAL ACCOUNTS SPECIAL CATEGORIES[2]	10	6	6	6	6	6	6	6	6	6	6	6	6	6	6	94
FEDERAL PROGRAMS & SERVICES																
[§221(a)][3]	9.8	10.6	12	13.5	15	16.5	18	19.5	21	22.5	24	25.5	27	28.5	30	293.4
[§221(b)][4]	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	180
[§223]	10	7.5	5	2.5												25
[SUBTOTAL]	41.8	36.1	35	34	33	34.5	36	37.5	39	40.5	42	43.5	45	46.5	48	592.4
TOTAL	162.85	149.15	148.05	147.05	146.05	126.55	128.05	129.55	131.05	132.55	119.05	120.55	122.05	123.55	125.05	2,011.15

Notes:

1. The Compact contains a provision to offset decreases in the purchasing power of the U.S. dollar. Its operation is tied to changes in the United States Gross National Product Implicit Price Deflator, in no year however can the impact exceed 7% of the base amount calculated from FY 1981 and not compounded.

2. The annual $6 million grant under Section 216 will be divided among scholarship, health and marine zone enforcement categories. Its allocation among Palau, the Marshall Islands and the Federated States of Micronesia will be as mutually agreed pursuant to Section 216(c).

3. Section 221(a) programs include Postal Service, Weather Service, CAB, FAA and FEMA.

4. Section 221(b) is Health and Education programs. A $12 million annual cost is assumed. This number represents the FY 1980 level of programs discounted by $2 million in Section 216(a)(2).

THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

FEB 13 1984

RECEIVED
FEB 21 1984

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

On June 3, 1980, your committee held a closed oversight hearing on the political status negotiations for the Trust Territory of the Pacific Islands. At that hearing, officials of the Carter Administration provided information with respect to United States negotiating objectives and to the relationship of the anticipated Compact of Free Association to the overall United States foreign policy and national security postion in the Pacific. After the hearing, committee staff, at Chairman Jackson's direction, submitted some five hundred questions for written response.

When this Administration assumed office, it determined to perform a policy review with respect to the political status negotiations and asked the Committee's indulgence in delaying the submission of answers to the questions, which had not been answered by the Carter Administration, until completion of the policy review. Your Committee staff agreed to this.

On January 27, 1982, then-Undersecretary of State and Micronesia Interagency Group Chairman James Buckley wrote you and submitted this Administration's answers to those questions (about half) which dealt generally with the political status negotiations and U.S. policy toward the Trust Territory. He noted in his letter that answers to the remaining questions, all of which have to do with specific sections and articles of the Compact, would be forthcoming. In subsequent communication with Committee staff on this matter, we stated our intention to submit these answers as soon as the Compact was put in the form in which it will be submitted to Congress for approval. That has been accomplished, and I am pleased to enclose in this letter the Administration's answers to the remaining questions. All of the answers are unclassified. We appreciate very much the Committee's understanding of the reasons for our delay in responding to these questions and hope that our responses will prove useful to the Committee as it takes up consideration of the Compact in the weeks ahead.

Sincerely,

Fred M. Zeder II
Ambassador

Enclosure

SECTION 6

Official Committee File

THE FOLLOWING QUESTIONS AND ANSWERS ARE ARRANGED IN THE ORDER OF REFERENT PROVISIONS IN THE COMPACT OF FREE ASSOCIATION

PREAMBLE

6.1.A. Regarding the Preamble, why does the United States Government have an interest in promoting the economic advancement and self-sufficiency of peoples of the TTPI?

U.S. policy has reflected certain United States obligations under both the Trusteeship Agreement and UN Charter provisions relating to the Trusteeship system. These obligations are also consistent with USG policy objectives to achieve political and economic stability of the area as a means of securing U.S. strategic interests and providing a receptive environment for our military presence. Although the trusteeship will terminate, basic U.S. policy objectives will continue to be relevant.

6.1.B. Does the continuation of post-termination economic support reflect a continuing legal obligation flowing from the Trusteeship Agreement, a quid pro quo for U.S. defense rights, or something different?

The U.S. will have no continuing legal obligation imposed by the U.N. or the Trusteeship Agreement once the agreement is appropriately terminated, nor has the USG obligated itself to continue specific economic support as consideration for its defense rights. Rather, the economic support included with the Compact results from the U.S. policy objectives articulated in the preceeding answer.

6.2A. The Preamble recognizes "the common desire to terminate the Trusteeship". Why does the U.S. desire to terminate the Trusteeship?

The U.S. desires to end both its function as Administering Authority (which has sometines led to false allegations of colonialism) and the U.N. supervisory role under the Trusteeship. The basic goals of the trusteeship have been achieved in the Trust Territory. The peoples of the Trust Territory have advanced sufficiently politically, socially and economically to achieve self-government. Continued US administration under the trusteeship system would therefore be untenable and would serve neither the legitimate, aspirations of the inhabitants of Trust Territory for self-government, nor U.S. interest in a close and continuing relationship with the islands we have administered since 1947. Indeed, now that the constitutional governments are established and functioning, though still subject to U.S. authority under the trusteeship, termination of the trusteeship will complete the process of transition to full self-government.

6.2.B. Have the Governments of Palau, the Marshall Islands and the Federated States of Micronesia expressed a desire to terminate the Trusteeship?

The Congress of Micronesia -- consisting of elected representatives of all island groups in the Trust Territory -- initiated the status negotiations in 1969. At that time and since, Micronesian elected leaders have made clear their desire to terminate the Trusteeship on the basis of a political status approved by their peoples. These long-standing desires have been repeated by the three constitutional governments.

6.3.A. The Preamble states that entry into the Compact constitutes an exercise of the sovereign rights to self-determination of the TTPI. Where is the sovereignty of the TTPI currently vested?

It has been generally acknowledged that sovereignty resides in the peoples of the Trust Territory. The United States has never asserted sovereignty over the Trust Territory. However, within the legal regime of the Trusteeship, the United States and the duly consituted governments of the Trust Territory have together exercised the governmental authority associated with sovereignty.

6.3.B Do the Micronesians have a legal right to self-determination?

Whether self-determination, traditionally viewed as a political principle, confers legally binding rights as a matter of international law, as a result of the widespread practice of states since World War II, is still controvesial. The US has, however, obligated itself under the Trustesship to promote self-government in accordance with the freely expressed wishes of the Micronesians, which goal it implementing appropriately through plebiscites.

6.3.C. Does the Compact end the responsibilities of the Government of the United States to the United Nations?

The Termination of the Trusteeship Agreement will end United States responsibilities to the U.N. with respect to the Freely Associated States (FAS).

6.4.A. The Preamble does not state what will happen at the end of the fifteen year life of the Compact. At the end of the fifteenth year, does this Administration envision that the U.S. would negotiate independence, a more permanent relationship such as commonwealth, or a continuation of Free Association?

The political relationship, as distinguished from the economic and defense provisions of the Compact, has no fixed termination date and continues in effect until terminated by agreement or unilaterally. A FAS may terminate the Compact unilaterally, but only after a plebiscite has demonstrated that such action represents the freely expressed will of the people. Any subsequent relationship will have to be negotiated at the time of termination. The duration of free association depends upon the will of the participants to make it work and upon the development of mutual trust. Free Association could continue in its present form or with mutually agreed modifications, or the FAS might become independent or enter into a relationship closer than free association with the U.S.

6.4.B. As a practical matter is there any difference between free association and the relationship between the U.S. and Guam or the U.S. and Puerto Rico? With respect to current U.S. authority? With respect to future status changes?

The United States has sovereignty over Puerto Rico and Guam, which it does not now have over the TTPI and will not have over the FAS. One of the principal consequences of this arrangement is that, unlike Puerto Rico and Guam, the FAS will have foreign affairs authority. In many ways however, the United States will treat the FAS as though they were U.S. territories.

TITLE ONE -- GOVERNMENTAL RELATIONS

Article I

Self-Government

6.5.A. Section 111 states that the FAS will be self-governing. On what basis do we believe that the TTPI is capable of governing itself?

Under U.S. guidance, the FAS have established constitutional governments. They have a U.S.-educated leadership and a bureaucracy with decades of TTPI administrative experience. The Micronesians have a strong desire, as well as adequate preparation, to undertake the responsibility for determining and implementing their own destiny.

6.5.B. To what extent does the Government of the U.S. have a role in helping the local governments to govern themselves subsequent to termination?

The United States may give technical assistance and is prepared to provide federal program assistance in technical areas (such as aviation, telecommunication, weather and postal services) as the FAS assume the functions of self-government.

6.5.C. To what extent do we have an obligation?

Our obligations to provide such assistance are as set forth in the Compact.

Article II

Foreign Affairs

6.6.A. How will the post-termination foreign affairs between the U.S. and the FAS be conducted? Outside of what is in the Compact presently, how do we contemplate that the foreign affairs between the U.S. and FAS will be governed (e.g., by treaties and other bilateral international agreements or by amendment to the Compact)?

Relations between the U.S. and FAS will be regulated by the provisions of the Compact. Changes to this framework can be made either by amendment of the Compact and its related agreements or by the conclusion of additional agreements between the U.S. and the FAS. In this sense the relationship will be determined by mutual agreement and, at present, does not extend beyond the Compact and its related agreements.

6.6.B. Re: 121 (b), how have we guaranteed U.S. commercial and economic interest in post-termination FAS (e.g., U.S. commercial fishing interests)?

Under the Compact, the FAS will have general authority over commercial matters within their territories. Any specific arrangements relating to U.S. commercial interests will require bilateral determination and the U.S. government will play its traditional role of promoting those interests.

6.6.C. Re: 121 (b)(2), we have indicated that the FAS can conduct postal, civil aviation and communications foreign affairs; how is this reconciled with the undertaking elsewhere in the Compact that the FAS will enter into subsidiary agreements with the U.S. with regard to these specifics?

The U.S. has offered to provide programmatic assistance in the areas of postal service, civil aviation and communications and to represent the FAS in international organizations dealing with these matters. The FAS have the capacity, pursuant to their constitutions, to carry out these activities on their own behalf or accept these offers by the U.S. to represent them. Particularly during the a transitional period until the FAS develop the technical capabilities to assume these responsibilities, the USG is prepared to act as their agent.

6.7.A. Section 121 appears to confer foreign affairs capacity on the Freely Associated States. If sovereignty ultimately rests with the Micronesian states isn't this section meaningless except as an indication that the U.S. will recognize their juridical character as nations capable of government-to-government relations?

In the Compact, the USG recognizes the foreign affairs capacity of the FAS; the capacity is not conferred by the USG or by the Compact. This Section's import is that the United States recognizes the foreign affairs competence of the FAS on a bilateral basis.

6.7.B. Can foreign affairs capacity be conferred or is it a conclusion from other nation's recognition of the Freely Associated States as independent nations?

Although free association is distinguished from independence in the security and defense area, in other aspects of foreign relations free association is similar to the status of independence in that third states must recognize the government's new status and the foreign affairs powers associated with it in order for the FAS to enter into bilateral relations with those third states.

6.7.C. Will other nations recognize the FAS?

States in the Pacific region have indicated their receptivity to recognizing the emerging FAS. Japan has, with U.S. approval, concluded bilateral economic fishery agreements with the Governments of the FAS. The nations of the South Pacific Forum have given their approval for membership of the Federated States of Micronesia to become an observer of the Forum and a member of both the South Pacific Bureau for Economic Cooperation and the Forum Fisheries Agency. The FSM, Marshall Islands and Palau have also been accepted as associate members of the South Pacific Commission. Given this trend to extend some recognition even before trusteeship termination, we anticipate the important regional states will take the lead in recognizing the FAS.

6.7.D. What will happen if other nations do not recognize the FAS as independent nations?

Free association is distinguished from independence. The FAS will have limited their capacity in the security and defense area and as a result, will not be recognized as "independent". The relevant factor is whether the regional States will accept the FAS into the cooperative regional organizations and will enter into bilateral economic and cultural arrangements. By the terms of the Compact, the FAS will be precluded from joining mutual defense arrangements.

In the international arena, the question is whether the FAS will be allowed to join international organizations such as the International Telecommunication Union (ITU) in light of their status as freely associated, but not independent, states and their consequent ineligibility for UN membership.

6.8.A. Section 122 states that the U.S. will support FAS membership in international organizations. Does this include the U.N.?

The FAS have agreed not to seek U.N. membership while in free association.

6.8.B. How strongly will we support their membership?

The USG will determine whether to support membership in regional and international organizations on a case-by-case basis.

6.9. In Section 123 the FAS undertakes to consult with the Government of the U.S. in the conduct of their foreign affairs; what remedies do we have if the FAS fails to live up to this undertaking?

Should an FAS fail in its Section 123 undertakings, the USG shall have traditional international law remedies for breach, such as diplomatic protest. If there is a fundamental breach, the USG has the right of unilateral termination. By way of more limited response, the U.S. could withhold funds or programs (*e.g.*, by placing the proceeds into escrow). The Title Four dispute-resolution mechanism is designed to forestall the necessity for such severe remedies.

6.10. In Section 124, The Government of the U.S. has agreed to act on the behalf of the FAS in the area of foreign affairs; What kinds of assistance are contemplated under this provision?

Section 124 contemplates general assistance in representing FAS interests in other countries to the extent -- and only to the extent -- specifically requested by the FAS and agreed by the USG.

6.11.A. Section 125 and other sections indicate that the U.S. may act on behalf of the FAS and may, if agreed, be held liable for FAS actions. How will these arrangements be entered into?

Depending upon the nature of the request and the prevailing circumstances, the U.S. Government and the FAS parties would enter into specific bilateral agreements. Section 125 removes the USG from a position of liability unless expressly agreed in such a bilateral agreement and thereby establishes its limited role. In operative terms, therefore, the U.S. might agree to communicate an FAS message to a third state but would not be held responsible for the substance of such a message or a breach of its terms by the FAS.

6.11.B. Will Congressional approval be required of such an arrangement?

Clearly Congressional approval will be required in any area in which Congress has constitutional authority. However, the idea of Section 125 is to limit USG liability. We do not envision the necessity for Congressional action in the vast majority of contemplated undertakings. If circumstances indicate a likely Congressional concern, we will consult with Congress.

6.12.A. Under Section 126, will the citizens of the FAS travel under U.S. passports?

The FAS will issue their own passports.

6.12.B. What is the nature of the consular assistance contemplated under this provision?

The FAS will not have worldwide consular systems. We have offered the FAS the option of asking host-countries whether the local U.S. consular officers may provide consular assistance in those countries on behalf of the FAS for a predetermined period. If a given host-country agrees, the USG will provide consular assistance to FAS citizens on much the same basis as it does now to U.S. citizens and Trust Territory citizens.

6.13.A. In Section 127, the U.S. Government relinquishes a number of its treaty obligations with regard to the TTPI. What treaties are addressed in Section 127?

Generally, the US applies treaties to which it is a party to areas where the US exercises jurisdiction, such as the TTPI, where the subject matter of such agreement is relevant to the area and such application is not otherwise precluded. These are the agreements encompassed by Section 127. Not included in Section 127 coverage are defense treaties and international security agreements.

6.13.B. To what extent will the newly emerging governments assume the responsibilities of the U.S. Government under those treaties?

The FAS would have to examine each treaty to determine whether it would succeed to the particular treaty in accordance with applicable international legal principles concerning succession.

Article III

Communications

6.14.A. Under Section 131, why is the FAS the sole administration entitled to make notification to the IFRB and not the U.S.?

Section 131 provides that while the FAS possess the notification authority, the U.S. will continue as their agent before the IFRB.

6.14.B. How are communications and frequency assignments currently made in the TTPI?

Radio frequency assignments for all radio stations operated by the High Commissioner as "Official Government Stations" are granted to the Secretary of the Interior by the National Telecommunications and Information Administration (NTIA), as recommended by the Interdepartment Radio Advisory Committee (IRAC). The Secretary assigns his responsibility for the proper operation of these stations to the High Commissioner.

Radio frequency assignments for non-government radio stations (any station that is not operated by the High Commissioner as an Official Government Station) are granted/authorized/licensed by the High Commissioner following provisions of Title 35, Code of Public Regulations, Trust Territory of the Pacific Islands. The Secretary of the Interior, after appropriate coordination with the NTIA, provides to the High Commissioner broad, basic authority for use of specific radio frequencies and families of international call signs.

For the geographic area of the TTPI, frequencies for government and non-government stations are as provided by International Telecommunication Union (ITU) allocations for Region 3, and contained in Article 5 of the ITU Radio Regulations, 1968 edition, as revised.

Only certain frequencies, usually below 30,000 kHz, for government and non-government stations are coordinated with the International Frequency Registration Board (IFRB) of the ITU for inclusion in the ITU's International Frequency List. The Department of State has designated the FCC as the principal representative to the IFRB/ITU. Interior works through FCC to obtain IFRB coordination.

6.14.C. How will termination of the Trusteeship Agreement change the communications regime currently established?

The currently established communications regime will continue for the FAS.

6.14.D. Why can't the U.S. continue to administer the commmunications of the FAS?

U.S. policy is directed to the decrease of its financial commitment to the FAS and the avoidance of disruption of essential services which underpin FAS economic and political stability. At the same time, the Micronesian governments are working to develop the capability of operating those essential services. Therefore, while the USG has agreed to a transfer of authority and responsibility for certain services to the FAS, it has also offered to assume a continuing role in the administration of communications in the FAS until such transfer is made. This role will continue for long as required by the FAS government concerned. During the transition period, the USG will assist the FAS government in training its citizens to assume complete responsibility for FAS communications.

6.14.E. How will the defense and security communications of the Government of the U.S. be protected post-termination pursuant to Article III?

The defense and security communications of the Government of the United States are protected in two respects. First, in the general undertaking contained in Section 132 of the Compact, the FAS governments have agreed to "permit the Government of the United States to operate telecommunications services ... to the extent necessary to fulfill the obligations of the Government of the United States under the Compact." Second, the agreement subsidiary to Section 132 spells out in detail the specific rights and responsiblities of the U.S. with regard to telecommunications. This agreement addresses U.S. defense-related telecommunications and the telecommunications associated with the various federal programs and services extended to FAS,, e.g., Weather Service and FAA.

6.14.F. What plans does the Administration have to put a basic communications system in place prior to termination?

The Administration is currently upgrading the entire TTPI communications system. There are three main elements to this plan. First, the Administration has brought about the installation of satellite ground stations in the future FAS. The governments contracted with COMSAT for these stations, now is operation throughout each of the future freely associated states. The second element in the plan includes refurbishing the local telephone systems and replacing worn-out equipment. The third phase will see the replacement of all 105 outer-island radios.

Article IV

Immigration

6.15.A. **—Section 141, will visas be required for the citizens of the FAS to enter the United States?**

Citizens of the FAS will not require visas to enter the United States as nonimmigrants. Section 141(a) of the Compact exempts citizens of the FAS from the visa requirement of Section 212(a)(20) and (26) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(20)(26). Section 141(c) indicates that visas would be required if an FAS citizen sought to establish lawful permanent resident status.

6.15.B. **Will citizens of the FAS be required to hold a permanent residence permit in order to enter to work in the U.S., in other words must a citizen of Micronesia post-termination have to have a bona fide job offer for a position which has been certified by the U.S. Department of Labor as one for which no U.S. worker is qualified and available in order for that citizen of the FAS to enter the U.S.?**

Citizens of the FAS will not be required to have Department of Labor certification. Section 141(a) of the Compact exempts citizens of the FAS from the Department of Labor certification requirement of Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. §1182(14).

6.15.C. **What prevents the FAS from being a back door for unrestricted admission of citizens of other countries into the U.S. under the guise of being citizens of one of the FAS?**

Section 141 of the Compact prevents the back-door immigration of citizens of other countries by limiting the right of admission to: persons who were citizens of the Trust Territory on the day preceding the effective day of the Compact; persons born in the FAS; and naturalized citizens of the FAS who have been in actual residence in the FAS for not less than five years after their naturalization and who hold a certificate to that effect. Actual residence is defined in Section 461(h) as physical presence during 85% of the required period of residence.

6.15.D. **Re: Section 141(b), what is meant by the restriction that citizens of the FAS may establish habitual residence or domicile in a territory or possession of the U.S. only according to the laws of that territory or possession?**

The term "habitual residence" is defined in Section 461(g) as a place of general abode, actual dwelling place of a continuing or lasting nature. Section 141(b) is intended to allow Guam, the Northern Mariana Islands and American Samoa, to the extent they already possess immigration control authority, to control anything beyond temporary presence of FAS citizens in their respective communities, given the very small size of these island communities. The second sentence of Section 142(a) contains an analogous limitation on the right of United States citizens to settle in the FAS.

6.15.E. Has this provision been cleared with Immigration and Naturalization?

The immigration provisions of the Compact have been cleared with the Immigration and Naturalization Service.

6.15.F. Can we expect the same Administration attitude towards the FAS as was recently exhibited towards the Northern Marianas?

A repetition of the unfortunate early-1980 incident with the Northern Mariana Islands is not likely to occur because these provisions are expressly embodied in an agreement approved and enacted into law by Congress, and not based soley on an administrative interpretation.

6.15.G. Who is going to oversee this provision?

These provisions will be administered primarily by the Immigration and Naturalization Service. Any disputes would be subject to the dispute-resolution procedures of Sections 421-424 of the Compact.

6.16. Section 142 subjects citizens of the U.S. to the right of the Governments of the FAS to deny entry to or deport U.S. citizens as undesirable aliens. Does the U.S. have a reciprocal right?

The United States has the right to deny entry to and deport undesirable aliens. Section 141(a) of the Compact exempts citizens of the FAS from the provisions of subsections 212(a)(14)(Labor Certification), (20)(Visa Requirement), and (26)(Passport Requirement) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(14), (20) and (26). The other exclusion and deportation provisions of Sections 212 and 241 of the Immigration and Nationality Act, 8 U.S.C. § 1182, 1251, remain applicable to citizens of the FAS.

6.17.A. Section 144, why have we allowed citizens of the U.S. to accept governmental positions in the FAS?

It appears that the FAS will, for a number of years, require the service of specialists who will not be citizens of the FAS. It is in the spirit of the free association relationship that such positions be filled by citizens of the United States rather than by citizens of third countries.

6.17.B. Will citizens of the U.S. who take an oath of allegiance to the constitution of one of the governments of the FAS and accept a post in that government risk the loss of U.S. citizenship?

Pursuant to Section 144 of the Compact, a citizen of the United States is exempted from the provisions of Section 349(a)(2) and (4) of the Immigration and Nationality Act, 8 U.S.C. § 1481(a)(2) and (4). A citizen of the United States who actually takes an oath of allegiance to a Government of the FAS would therefore not risk loss of his United States citizenship under Section 349(a)(2) or (4) of the Act, due to the above-mentioned exemption.

Article V

Representation

6.18.A. Under Section 152, will the representative be like a High Commissioner, an Ambassador, or a Consular Officer?

The term "resident representative" was chosen to reflect the unique character of the assignment and close relationship between the U.S. and the FAS under the Compact. The U.S. representatives will be responsible for dealings with the FAS on all aspects of the free association relationship as set forth in the Compact. While this means that they will have some functions of diplomatic and consular officers, they will also have responsibilites unique to the free association relationship.

6.18.B. Will free association be a halfway house to independence?

Free association could be a transitional prelude to independence or to a closer relationship. Free association could also become a permanent relationship. The U.S. and the FAS will have to reevaluate the viability of each of these options in light of the workability and experience of free association.

6.19. Section 153, why was it thought necessary that the U.S. agents of the governments of the FAS enjoy exemption from the requirements of the laws of the U.S. relating to the registration of foreign agents?

In view of the close relationship under free association and the concomitant Compact requirement for frequent consultation, all parties determined it desirable to facilitate access to the United States Government of U.S. citizens serving as spokesmen for the FAS. To treat such persons as "foreign" could have an adverse effect on communications between FAS-U.S. representatives. The provision is consistent with treating the freely associated relationship as closer than those with foreign states.

Article VI

Environmental Protection

6.20.A. In Section 161, why are environmental considerations important?

The Marshallese and FSM status negotiating commissions concluded that the root of their people's concern with defense-related activities is environmental protection. This concern is keenly felt by those, especially in the Marshall Islands, who were affected by the U.S. nuclear testing program of 1946-58. The FAS believed that US judicial review court access and the U.S. regime of environmental laws will protect them from potential abuse of discretion in the implemention of US defense powers.

6.20.B. Why has it been necessary to negotiate such a detailed provision of environmental undertakings in post-termination FAS?

The FAS wanted the certainty that they believe such detailed provisions provide. From the U.S. perspective, the seeming complexity is the result of two factors. First, the Compact's environmental provisions apply environmental standards which were originally designed for urban areas to island environments. Second, this is done in the context of a unique governmental relationship. Thus, for example, those U.S. environmental laws which are based on the state/federal concept known as "cooperative federalism" had to be adapted to the regime of free association.

6.20.C. Do the FAS have the resolve to preserve the FAS environment which would lead them to expend their resources to preserve it, especially in view of their need for development?

We believe the FAS are serious about protecting their environments. EPA has assisted the Micronesian governments in setting up comparable pollution control programs. At present the individual jurisdictions of the Trust Territory are defined as "states" under the Clean Water Act section 501(3), Toxic Substances Control Act section 3(14) and the Safe Drinking Water Act section 1401(13) and as such are currently eligible to assume all implementation and enforcement authority available under these Acts.

6.20.D. Explain the differences in approach between the U.S. approach to post-termination FAS and the U.S. approach to other foreign areas.

The Compact requires that U.S. activities comply with environmental standards substantively similar to those required by U.S. law (taking into account the particular island environment). The U.S. policy in other foreign areas is to comply with the local environmental laws. The Compact scheme essentially preserves the status quo. This is another example of how the FAS, under the relationship, is treated more like a U.S. territory than a like "foreign" state.

6.21.A. Under Section 161(b), why are we requiring the FAS to enact and comply with similar environmental statutes?

In order to accomplish the desired goal of protecting the FAS environment, ambient standards will have to be met. Therefore, any standards set by the U.S. Government have to be complemented by environmental standards enacted by the FAS. Thus it is up to the FAS to balance the equation between development and environmental protection.

6.21. B. Does the U.S. have a legal right to enforce FAS compliance?

The USG has no legal authority to mandate FAS compliance or to stop FAS activities (unless there are clear defense implications). The USG will have an affirmative defense if a FAS sues the USG in order to force higher enviromental standards.

6.21.C. Who will have standing?

No one, assuming this question is limited to Section 161(d).

6.21.D. What happens if the FAS fails to comply with Section 161(b)?

U.S. policy would be to continue to apply U.S. laws to U.S. Government activities. However, the FAS would have failed to fulfill their reciprocal obligation to comply and would not be able to bring enforcement action under Section 162. In addition, the U.S. environmental standards could not be tailored specificially to the unique environments of the FAS, due to the lack of any locally-established standards reflecting local conditions and concerns.

6.22.A. Section 161(c). How will the agreement contemplated in Section 161(c) be reached?

Any signatory government could initiate consultations and negotiations aimed at reaching such agreement.

6.22.B. Since the Compact will be approved by joint resolution, will an Act of Congress be required to implement any agreement to supersede environmental laws?

Section 161(c) contemplates that any such agreement will be an Executive Agreement.

6.23.A. Section 161(d). Why are we obligating ourselves to comply indefinitely with environmental laws which may be amended?

We are not. The Compact provides that any reference in Article VI of Title One to a provision of the U.S. Code may be amended thereafter on a non-discriminatory basis, according to the constitutional processes of the U.S.

6.23.B. If the objective of this section is to afford Micronesians the same degree of protection which U.S. citizens have, why shouldn't amendments to or repeal of environmental laws equally apply?

They do. This section was needed to ensure continuity of a regulatory approach -- which is triggered by NEPA -- in the event NEPA is repealed.

6.23.C. Re: 161(e), this section states that the President of the United States may exempt any of the activities of the U.S. from any environmental standard or procedure if the President determines it to be of paramount interest to the Government of the U.S. to do so. Is this a power personal to the President or may it be delegated?

This section reflects the language in Section 313 of the Clean Air Act and similar language in other enviromental statutes. It has never been used. The Compact does not change the President's constitutional authority to delegate; however, in E.O. 12088 of October 13, 1978, the President stated this power was nondelegable.

6.23.D. Is this Presidential exemption power reviewable in the courts of the U.S.?

Yes, but only by the governments of the FAS as specifically provided for in the Compact. No affirmative right to challenge is created in the Compact. Section 162 allows the FAS government concerned to bring an action in the U.S. District Court for the District of Hawaii or the U.S. District Court for the District of Columbia.

6.24.A. Section 162 allows the governments concerned to bring an action in the U.S. District Court for the District of Hawaii and the U.S. District Court for the District of Columbia. Why was it necessary to open U.S. courts to the governments of the FAS?

The FAS believe that judicial review provides an acceptable measure of protection from potential U.S. abuse of discretion in the exercise of its defense powers.

6.24.B. Will this additional jurisdiction not overburden our already overburdened courts?

No. Few law suits are anticipated. The Hawaii District Court currently has jurisdiction in the TTPI. In the last decade there has been only one reported environmental case involving the TTPI: Enewetak v. Laird, 353 F supp. 811 (D. Hawaii 1973).

6.24.C. Are citizen suits also contemplated under this provision?

No.

6.24.D. Are any new, different, or greater rights then those available to U.S. citizens available to the FAS?

No.

6.24.E. Can U.S. citizens bring an action under this provision if the FAS were to waive the requirements of this section?

A FAS cannot unilaterally "waive" a requirement. Any amendment must be agreed to by the U.S.

6.25.A. Section 163, why have the governments of the FAS been granted access to documents and information of the U.S. under the Freedom of Information Act (FOIA)?

Under FOIA as now in force, any foreign government and its citizens, including the U.S.S.R., have access to U.S. information. The FAS, aware that a subsequent act of Congress could deny aliens access to the FOIA and fearing that Congress could lump them together with all other aliens should such an amendment to FOIA be passed, sought this language so as to ensure that Congress would make a specific determination as to the status of the FAS under any amendment to the Act.

6.25.B. What happens to proposed U.S. activities if the FAS do not allow access for environmental data gathering?

The U.S. would have to base environmental standards on data otherwise available.

6.25.C. What remedies are available to the U.S.?

The FAS would be in breach of the Compact and estopped from suing if the U.S. was thereby prevented from establishing standards.

6.26.A. What does Section 163(c) mean?

The undertaking not to impede was proposed by the FAS as a sign of good faith.

6.26.B. What concern led to its inclusion?

The USG welcomed this signal of good faith by the FAS.

6.27.A. Will the FAS have to undergo a NEPA-like process in the event they and Japan decide to go forward with a superport in Palau?

Any non-US activity, be it foreign or domestic, in a FAS must comply with local standards. Only major U.S. Government actions significantly affecting the quality of the human environment are subject to the NEPA process. The U.S. would have no legal authority to stop a superport project unless there were clear and unacceptable defense implications.

6.27.B. What environmental standards will apply?

FAS environmental laws will apply to FAS activities; the U.S. will develop standards, in consultation with the FAS, which will apply to U.S. activities. However, in no case will the U.S. be obligated to adhere to standards higher than those imposed by a FAS on its activities.

Article VII

General Legal Provisions

6.28.A. Section 171, states that the application of U.S. laws to the TTPI ceases as of the effective date of this Compact, unless otherwise specifically provided in the Compact. Can the Government of the U.S. subsequently pass a law which specifically provides that it is applicable to the FAS?

The United States would have the power to pass such laws. Unless a FAS agreed to the application of such a statute in its jurisdiction, however, such attempted extraterritorial application might be inconsistent with those provisions of the Compact which give the FAS control over their internal affairs and foreign relations. Such U.S. statutes therefore could give rise to disputes, which would be settled pursuant to the Dispute Resolution procedure of Sections 421-424 of the Compact.

6.28.B. **What would happen if post-termination the U.S. Congress would pass a law which was for the benefit or welfare of some or all of the inhabitants of the FAS, could the intended beneficiaries accept these benefits?**

Yes, pursuant to mutual agreement.

6.28.C. **Re: The U.S. statutes which are currently applicable to the TTPI; do these statutes need to be amended?**

The U.S. statutes now applicable to the TTPI would be amended as a function of the enactment of the Compact into law. As a matter of clarity, however, subsequent legislation expressly listing those laws which had applied to the TTPI and which would not apply to the FAS might prove useful. Acts of this nature have sometimes been enacted after the admission of States into the Union.

6.29.A. **Section 172(b), refers to the Freedom of Information Act. Is it the understanding of the parties that Congress is free to amend or even to rescind the Freedom of Information Act?**

Section 172(b) is subject to the legislative powers of the Government of the United States, and this point is recognized in Section 463(b). The United States therefore would not violate the Compact if it amended or rescinded the Freedom of Information Act, or if it provided that foreigners, including citizens of the FAS, should not be considered "persons" within the meaning of the Freedom of Information Act.

6.29.B. **Would the U.S. be in breach of an agreement were Congress to provide that citizens of the FAS shall not be considered a "person" within the meaning of the Freedom of Information Act?**

A statute singling out citizens of the FAS for discriminatory treatment might be considered to violate the spirit of the Compact Section 463(b), but Congress could pass such a law if it applied to all aliens.

6.30 **Section 174 is the concept of sovereign immunity. Is this concept of sovereign immunity similar to that which is established as between, for example, the U.S. and Spain or is it similar to that which is established between, for example, the U.S. and Guam?**

Section 174 is based on the Foreign Sovereign Immunities Act of 1976, especially 28 U.S.C. §§ 1604, 1605. The concept of sovereign immunity established by this Section is therefore similar to that which exists between the United States and Spain.

6.31.A. Section 177 relates to the Northern Marshall Islands Nuclear Claims Agreement. What in the Administration's view is the interrelationship between Section 104 of Public Law 95-134 of October 15, 1977, and the agreement pursuant to this section?

In the Section 177 Agreement, the U.S. recognizes the expressed desire of the Government of the Marshall Islands to include in its "integrated, comprehensive and universal" health care system certain health care and surveillance programs and radiological monitoring activities, including those incorporated in Section 104 of P.L. 95-134, of October 15, 1977. The subsidiary agreement provides that these services will be supplied by United States government personnel or contractors.

6.31.B. Why did the Administration oppose enactment of Section 104 when you have already agreed to assume full responsibility for radiation related injuries in the Marshalls?

In Section 177(a) of the Compact, the United States accepts the responsibility for compensation owing to the Marshallese; it does not purport to assume "full responsibility".

6.31.C. Does Section 177 open the U.S. to personal injury suits?

No. Under the Section 177 separate agreement, the Government of the Marshall Islands espouses and settles all claims of itself and its citizens arising from the nuclear testing program.

6.31.D. How will the health care program of subsection 177(b) relate to the already mandated program?

Upon termination of the Trusteeship, the Marshall Islands will assume authority and responsibility for its own health care program. In addition to the health care grant provisions of the Section 177 Agreement (which amount to $2 million annually), funds are provided under Section 211(a)(3), 216(a)(2) and 221(b) of the Compact which may also be expended by the Government of the Marshall Islands to provide adequate health care for injuries resulting from the nuclear testing program.

6.31.E. Do you intend to modify the requirements of Section 104 of P.L. 95-134 as amended by P.L. 96-205?

Those public laws will not be applicable subsequent to termination. However, we believe the Section 177 agreement will implement the congressional intent of those laws.

6.31.F. Does the separate agreement require new authorization?

Yes.

6.31.G. What would happen if the U.S. did not appropriate funds to support the program you negotiated in the separate agreement?

Among other consequences, the Marshallese claimants would press for court resolution of their $8 billion in law suits.

TITLE TWO -- ECONOMIC RELATIONS

6.32.A. Title Two in General. What agency will interface with Congress in requesting grants and other assistance? Will a single lead agency request all funds, or will each agency post-termination programs and services separately request yearly appropriations?

This Administration has decided that after the Compact is approved, a single lead office in the Executive Branch will be given the assignment of coordinating the implementation of the Compact and of managing the U.S.-Micronesian relationship. Among these tasks will be the responsibility of participating in the annual Congressional appropriation process as well as maintaining liaison with interested members and committees of Congress.

6.32.B. Does the Compact contain an appropriation as did the Covenant for the Northern Marianas?

The Compact does not contain an appropriations clause, and approval of the Compact does not constitute an appropriation of funds. Rather, approval of the Compact by Congress would constitute a multi-year authorization for the subsequent appropriation of funds. This is similar to the relevant clause in the Northern Mariana Islands Covenant.

6.32.C. What assurance do the FAS have of subsequent appropriations?

The Freely Associated States have no firm guarantee that the Congress each year will appropriate the funds specified in the Compact and requested by the Administration. However, Compact Section 236 contains a pledge of full faith and credit for the Compact funds. Therefore, should Congress in any year choose not to appropriate the level of funding specified in the Compact, the affected freely associated state would have recourse to the U.S. Claims Court.

6.32.D. **Has OMB agreed to abide by the specified levels in this document or do they receive [sic] their options in the out years?**

The levels of economic assistance set forth in the Compact of Free Association have been approved by this Administration in a comprehensive policy review. All of our affected agencies, including the Office of Management and Budget, participated in and concur in this judgment. However, the Administration has made no pledges for funding beyond that set forth in the Compact.

6.32.E. **The Micronesians presently have an open-ended authorization, why have they agreed to limit future appropriations?**

The "open-ended" authorizations which have from time to time been applicable to the Trust Territory have never run for more than a few years. The Compact, on the other hand, while not open-ended as to amounts, is a longer-term authorization than the Micronesians have had in the past. The Micronesians sought this kind of commitment in order to provide them with predictability for the development planning process.

6.32.F. **Why did the Administration endorse an open-end authorization under 96-205 and now wants a limited authorization?**

This Administration does not favor authorizations which are open-ended as to amounts for the period of time involved in the Compact.

6.32.G. **Historically the Administration has never supported full funding for the TTPI, why should this authorization be different?**

In the past, financing of the Trust Territory has not proceeded on the basis of long-range planning. In the case of the Compact, which will be supported by long-range development plans drawn up by the freely associated state governments and approved by the U.S., we believe that full funding of the Compact's authorizations is a supportable policy.

6.32.H. **What happens to U.S. defense and security rights if the Administration fails to support full funding in the future or if the appropriations are delayed? Wouldn't a pledge of Full Faith and Credit protect these rights? Are you planning on breach of the Compact or termination or are the defense rights unimportant? Why was Full Faith and Credit included for the Marianas but excluded here? Has the House indicated any position on Full Faith and Credit? If we intend to fully appropriate, then Full Faith and Credit should be a useful negotiating tool. What did you give up to have it excluded? In fact, since the TTPI presently has an open-ended open-year authorization, the Micronesians are potentially better off by remaining under the Trusteeship or opting for territorial status similar to Samoa, aren't they?**

The Compact of Free Association contains "full faith and credit" language in Section 236.

6.32.I. What precisely are the dollar amounts included in this Compact, including federal programs and support services?

See attached chart. (appendix A)

Article I

Grant Assistance

6.33.A. Section 211, compare the payments which the FAS will receive under the Compact and the payments which the TTPI receives under this current status. How were these amounts derived?

The United States position on economic assistance under the Compact of Free Association was developed by combining two very different rationales. The first of these -- an economic rationale -- consisted of an assessment of the minimum and essential government financing needs of the freely associated state governments to support necessary government and social services as well as their anticipated needs for outside assistance in order to complete their basic infrastructure, to maintain it and to invest in revenue-generating projects and activities. The second rationale was primarily a calculation of what we thought we could afford given the area's relative importance to our security and defense needs measured against other activities competing for the federal dollar.

6.33.B. Why have the governments concerned and the U.S. agreed to more money in the first years than in the last years of the relationship?

The concept of "front-end loading" the economic assistance package is based on the shared U.S. and Micronesian goal that the governments should have adequate resources in the first years to ease their transition into a new political status and to invest in infrastructure and economic development projects. In this way, the local tax base should increase to fill the gap in the later years during which each of the freely associated states will face a real decrease in U.S. funding. The goal in designing the economic assistance of the Compact was to move each of the freely associated states gradually away from its present state of dependence on federal outlays in favor of more self-sufficient economies.

6.33.C. Why was it determined to provide the monies in Article I on a grant basis in contrast to a loan basis?

The Micronesians believed that their governments could not generate enough revenue over the Compact funding period to be able to pay back the amounts provided in Title Two, even on an interest-free basis. From the U.S. point of view, the provision of economic assistance to the freely associated states in grant rather than loan form was consistent with our understanding of the development needs of these states and with the history of U.S. support for the Micronesian peoples under the Trusteeship Agreement.

6.33.D. **With regard to the provision that a certain percent of the overall amounts annually be dedicated to the capital account, why was this division between capital account and operating account thought necessary?**

During the negotiations, the Micronesian negotiating delegations sought to justify the levels of economic assistance they were requesting as necessary if their governments were to mount economic development programs which would eventually lessen their dependence on the United States. Although the United States did not agree to the levels which the Micronesians requested, it did agree to increase somewhat the amount of assistance it would provide on the condition that a stated percentage (a 40% overall average of the grant assistance) be used by the freely associated state governments for economic development and infrastructure programs. The U.S. also imposed this condition because it was cognizant that Trust Territory practice has been to divert funding initially intended for construction and economic development to meet current government operating expenses.

6.33.E.1. **Re: Sections 211(b) and 211(c), what action is the Congress of the U.S. supposed to take on the annual report which the FAS are required to give?**

The annual report provided by the Micronesian governments will be made to the President and to the Congress in connection with the annual appropriations action of the Congress. It is anticipated that the freely associated state governments, in their reports, will address such subjects as their use of the previous years economic assistance, their plans for the subsequent year's assistance, their overall progress with respect to meeting the goals and objectives of their national development plans and their compliance with any Congressionally mandated requirements. Congress will have this material available to it for review as it proceeds through the appropriations process.

6.33.E.2. **Is it contemplated that the FAS may request and the U.S. Congress may authorize additional sums in the future?**

Although it is possible that the freely associated state governments may request and the Congress may authorize and appropriate funds additional to those specified in the Compact, no undertaking or contemplation that such will be the case is expressed or implied in the Compact. In fact, in Section 211(c) of the Compact, the freely associated state governments have agreed that they may not request additional assistance except in response to "exceptional economically adverse circumstances". That section also contains a specific United States disclaimer of automatic support for such requests.

6.33.E.3. Why does the Administration support this approach of a multi-year authorization and a year-by-year appropriation?

The Administration supports the concept of a multi-year authorization with specified amounts authorized for each year so that both the freely associated state governments and the United States can have predictability for planning purposes. The Compact requires the freely associated state governments to promulgate national economic development plans, and we believe that a multi-year authorization with specified annual amounts will provide the level of detail needed to execute this planning effort. We support the concept of a yearly appropriation process because we think that the discipline which the annual appropriations process imposes on the Executive Branch as well as on the freely associated state governments will help to insure a prudent use of the economic assistance. Also, we believe that Congress, through the appropriations process, does and should have a continuing role to play.

6.34.A. Section 212 commits the U.S. to complete a capital infrastructure program in Palau within five years. What projects are included?

The infrastructure projects which the United States has agreed to construct in Palau are be detailed in an agreement subsidiary to Section 212(a). There is no five year timetable contained in Section 212, although the United States will attempt to expedite completion in order to minimize cost. It should be noted however, that Palau is not included in the Compact which the President is submitting to Congress at the beginning of 1984.

6.34.B. Why should the Palauans expect this program to be completed any faster than the present five year 1st level CIP program?

We believe there are several reasons to expect improved contract performance for the Section 212(a) infrastructure program. First, we anticipate that total project management will be provided by DOD personnel with experience in the Trust Territory and the Pacific generally. Second, all the construction will take place in Palau, a relatively small area, whereas the present CIP is TT-wide. One-time contractor mobilization will be able to accommodate a great percentage of the projects. Third, project design specifications and construction priorities will be determined in consultation with the Government of Palau so as to avoid the down-stream alterations which have plagued the present program.

6.34.C. What happens if the program is not completed on time?

There is no time limit contained in Compact Section 212(a) or its subsidiary agreement. However, the United States is required to complete the construction within the first 15 years of the new relationship. We anticipate that the work can be completed in the first five years if the design work can be done beforehand. We would therefore have a ten-year safety margin.

6.35.A. Section 213 concerns the $9 million annual grant to the Government of the Marshall Islands. What is the purpose of the $9 million annual impact fund granted to the Government of the Marshall Islands?

The Compact initialed with the Marshall Islands in January 1979 contained a section 213 amount of $9 million. The Compact which was initialed on October 1980 and subsequently signed and approved in the plebiscite in 1983 provides for a $1.9 million annual impact fund in recognition of U.S. use of the Kwajalein Atoll. This amount is not adjusted for inflation pursuant to Compact Section 217. Its primary purpose is to provide the Government of the Marshall Islands with funding to finance local programs designed to mitigate any inconveniences experienced by it or its citizens resulting from U.S. use of the Kwajalein Missile Range. The difference between the two figures ($7.1 million) was moved into general grant funds for the Marshalls.

6.35.B. Is this a quid pro quo for the land use of Kwajalein?

The annual payment of $1.9 million specified in Section 213(b) is not a direct quid pro quo or lease payment for the land and water areas we use at Kwajalein. Rather, it is an impact payment.

6.35.C. What guarantee do we have that there will be no interference with U.S. use of KMR?

The Military Use and Operating Rights Agreement which we have signed with the Marshall Islands pursuant to Sections 321 and 323 of the Compact guarantees to the U.S. peaceful use of the Kwajalein Missile Range. The Marshall Islands Government is committed under that agreement to assure such use.

6.35.D. What problems have occurred in the past?

In the past, there have been peaceful demonstrations and sit-ins on some of the islands associated with the Range. The largest of these occurred in 1979 and the most recent demonstrations took place between June and October of 1982.

6.35.E. What is the position of the KMR landowners?

Many of the Kwajalein landowners have formed an organization, the Kwajalein Atoll Corporation or KAC, through which their views on U.S. use of Kwajalein are articulated. They have participated, as members of Marshall Islands Government delegations, in the negotiation of our present Interim Use Agreement for use of Kwajalein and in the negotiation of the longer-term Military Use and Operating Rights Agreement.

6.35.F. What alternatives are there to Kwajalein?

In consideration of the projected testing program for KMR over the next several years, which will include tests of the MX and Trident missiles, we do not believe that any other single location could replace Kwajalein. Our only alternative -- and one which we find unacceptable and potentially cost-prohibitive -- would be to move the facilities now at Kwajalein to a number of different locations.

6.35.H. What is the status of the study on alternatives to KMR?

The U.S. has conducted a number of studies in which alternatives to KMR have been considered. These studies all support the conclusions stated in answer to the previous question. The United Staes will of course continue to explore such alternatives.

6.35.H. Why did we relinquish our claims to Canton prior to completion of the study?

The United States determined that it had no continuing requirement for use of Canton Island. This determination was not affected by whether or not we continue to use the facilities at Kwajalein.

6.35.I. Are we prepared to recognize Marshallese claims to Wake? Why not if we were prepared to relinquish Canton?

The United States does not recognize any third-party claims to Wake Island, which is a possession of the United States under the administration of the U.S. Air Force. We have informed the Marshallese of this position. We have determined that we have a continuing long-term requirement for Wake Island. This determination differentiates Wake from Canton Island.

6.36. Section 216 notes that a million dollars annually is appropriated for the surveillance and enforcement of the respective maritime zones of the FAS. To what extent will maritime surveillance enforcement be a function of either the U.S. Coast Guard or the U.S. military?

It is not contemplated that either the U.S. Coast Guard or the U.S. military will have the responsibility for surveillance and enforcement of the maritime or fishery zones of the freely associated states under the Compact. In this sense, the situation which exists under the Trusteeship will continue. We will, of course, have overall defense and security responsibilities for the entire area.

6.37.A. Section 217 regarding inflation adjustment. How was the inflation adjustment formula derived?

During the negotiations, the Micronesian negotiators requested full indexing of the base amounts authorized in the Compact, using the Consumer Price Index as the adjustment factor and compounding the base. The previous administration opposed this type of full indexing, as does this Administration. The formula settled upon in Section 217 was the result of negotiation and mutual agreement.

6.37.B. To what extent does the Administration anticipate that inflation will be equal to the 7% maximum contemplated by that formula?

While it is difficult to predict the level of overall price increases in the economy over the next fifteen years, this Administration believes that inflation, as measured by the Gross National Product Implicit Price Deflator, has lessened substantially and will continue to lessen over the next several years as the result of Congressional approval of our economic recovery program. We therefore believe that the formula set forth in Section 217 will adequately protect the value of the economic assistance provided to the freely associated states in future years.

Article II

Program Assistance

6.38.A. Section 221. What is meant by the phrase "the levels equivalent to those available to the TTPI during the last year prior to the effective date of this Compact"?

The phrase "levels equivalent to those available to the TTPI during the last year piror to the effective date of this Compact" means that the level of service delivered to the Micronesians under the Compact will be the level of service delivered under the programs in question during the last year of the Trusteeship. This is to be differentiated from the level of dollars spent, which will probably be adjusted upward as, for instance, population in the freely associated states increases.

6.38.B. Why were the services of the Weather Service, FEMA, the Post Office, the FAA and the CAB chosen in preference to a number of others which could have been selected?

The federal services listed in Section 221(a) of the Compact were chosen for continued extension to the Freely Associated States because they are services which both the United States and the Micronesians considered important and which the Micronesian governments do not now believe they have the capability to provide. This is due primarily to the technical nature of these services, or, in the case of FEMA, to the superior ability of the federal government to respond effectively to such exigencies as natural disasters.

6.38.C. What interest does the U.S. Government have in continuing these programs?

The United States interest is best served by the development and maintenace of essential services such as weather prediction services, the mail service and the economic regulations of commercial air transportation throughout the area until such time as the freely associated state governments are capable of providing them. We further believe that provision of the services of the Federal Emergency Management Agency will help to protect our interest in and commitment to the ability of the freely associated states in the future to maintain essential government services and quality of life in the face of natural disasters. With respect to the provision of FAA services, we believe that the federal safety certification of airports and aircraft supports our national interest in maintaining safe and reliable transportation throughout the area.

6.38.D. On what basis will the U.S. extend Federal health care and education programs?

Section 221(b) of the Compact provides that the United States and the freely associated state governments will set forth in a separate agreement the specific nature and levels of its support targeted for health and education. Article XI of the Federal Program and Services Agreement provides that the United States Government shall provide an annual special block grant of $10 million for this purpose. The FAS governments must each submit a program plan detailing the expenditure details of this funding.

6.39.A. Section 224. To what extent is it contemplated that additional U.S. Federal programs and services will be extended to post-termination Micronesia?

Section 224 of the Compact provides that the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia may agree in the future to the extension of federal programs additional to those referred to in the Compact. For its part, the Administration has no plans to extend additional federal programs or services.

6.39.B. Will Congressional approval be needed to extend federal programs in the future?

The extension of any additional federal programs or services under Section 224 would require Congressional approval on a case-by-case basis.

6.39.C. Once extended can the U.S. unilaterally terminate the extension of a program?

The right of the U.S. to terminate unilaterally the extension of any additional federal program or service extended pursuant to Section 224 would depend on the conditions of extension entered into at the time of iniation of the program.

6.39.D. What about a decrease in funding levels or repeal of the basic authorization?

Any additional federal program or service could only operate within Congressionally appropriated funding limits and on the basis of Congressional authority.

6.39.E. How do these provisions, when taken together, make the FAS different from the Northern Marianas?

Compact Section 224 provides that any additional federal programs and services may be extended only by mutual agreement. For its part, U.S. agreement will take the form of Congressional authorization legislation approved by the President. However, the governments of the Freely Associated States must also agree to the extension. Were they not to agree, the Executive Branch could not extend the program, even if Congressional authorization existed. In the Northern Mariana Islands under the Commonwealth Covenant, the Congress may legislate the extension of federal programs or services irrespective of the wishes of the people and government of the Northern Mariana Islands.

Article III

Administrative Provisions

6.40.A. Section 231. What is the purpose of the four-year negotiating period?

The Compact is structured in such a way to provide that the political relationship of free association will continue until terminated mutually or by one of the parties. Titles Two and Three (Economic Relations and Security and Defense Relations), however, will expire at the end of the first fifteen years unless the parties to the Compact agree to extend them. It should also be noted that were termination of the free association relationship to occur prior to the expiration of the initial term, Titles Two and Three, along with certain selected other provisions, would continue in force for their full term as though termination had not taken place. Finally, the provisions for long-term foreclosure of the area to the military forces of third nations, for the continued defense of the area by the United States from outside attack and U.S. land use rights for military purposes will continue for their own terms irrespective of termination or expiration of the political relationship. The negotiating period set forth in Section 231 is designed to provide a period during which the United States and governments of the freely associated states can negotiate the terms of any extension of Titles Two and Three. These negotiations will commence on the thirteenth anniversary of the free association relationship and be automatically extended for two years beyond the fifteenth anniversary should agreement not have been reached by that time.

6.40.B. Does the two additional years contemplated also contemplate an additional two-year authorization?

If the negotiations contemplated under Section 231(b) do extend into the sixteenth and seventeenth years, the Compact provides that the provisions of Titles Two and Three shall continue in force during the negotiating period. In this instance, Section 231(b) would constitute authorization for the provision of economic assistance during the sixteenth and seventeenth years.

6.40.C. How much additional money will be required during these additional two years?

The aggregate amount of economic assistance provided by the United States during the sixteenth and seventeenth years will be, in each year, about $10 million less than that provided during the fifteenth year. Using the economic assumptions of the President's FY 1985 budget request, the estimated annual United States outlay for each of the sixteenth and seventeenth years is approximately $100 million.

6.41. Section 233. Who will conduct the periodic audit?

The Compact, in Section 233, provides that the United States has the authority to determine the procedures for and to implement periodic audits of use of Compact economic assistance by the freely associated states. It is contemplated that the Executive Branch office which manages the new relationship with the Freely Associated States will perform these audits. In addition, Congress may at any time commission additional audits by the General Accounting Office.

6.42.A. Section 234. To what extent is the High Commissioner of the TTPI and the Department of the Interior involved in transferring the title of the property of the Government of the United States?

Compact Section 234 provides that its approval will constitute the legislative authority to transfer to the Micronesian governments title to United States property located in the Trust Territory for which the United States has no continuing need. It is now the responsibilty of the High Commissioner of the Trust Territory, as well as the Department of the Interior, to work out the method of distribution of this property as between the Micronesian states as well as to the Northern Mariana Islands.

6.42.B. To what extent will this separate agreement affect defense property?

United States property located in the Trust Territory which the United States is now using and will continue to use for defense purposes will not be transferred to the freely associated state governments. Compact Section 234 provides that only property for which the United States unilaterally determines no continuing requirement will be transferred.

6.42.C. How does this provision relate to the recently passed House omnibus territories measure?

Section 402 of P.L. 96-597 provides that the High Commissioner shall, cause the transfer of title to the Micronesian governments of United States property located in the Trust Territory which the United States has determined to be surplus to its needs. This section and Section 234 of the Compact are identical in effect.

6.42.D. What is the Administration position?

The Administration supports and is implementing the provisions of Section 402 of P.L. 96-597 as consistent with the purposes of Section 234 of the Compact.

6.43.A. Section 235. What Trust Funds are presently in existence?

Compact Section 235 addresses the disposition of trust funds composed solely of federally appropriated funds and made available by the Congress to individuals or groups of individuals in the Trust Territory. The trust funds in question are the Bikini Trust Fund and Ujelang Trust Fund.

6.43.B. Where did these come from, why were they created, what will happen to them post-trusteeship?

These trust funds were created and funded by the United States Congress by legislation as _ex gratia_ contributions to the peoples of Bikini and Enewetak in light of the hardships they suffered as a result of the U.S. nuclear testing program. Compact Section 235 guarantees that these trust funds will remain available to their designated beneficiaries for the purposes and duration originally intended by the Congress. Section 235 also provides that the Government of the United States will fulfill any customary or statutory role played by the High Commissioner as to these trust funds.

Article IV

Trade

6.44.A. With respect to Article IV, what specific benefits is derived from this Article?

Article IV of Title Two of the Compact provides that the trade relations between the United States and the Freely Associated States shall be, at a minimum, as beneficial to each party as the treatment which that party extends to any other country. In addition, a special provision is made for duty-free entry of certain products from the freely associated states into the customs territory of the United States.

6.44.B. How will the treatment of the FAS under these sections differ from present treatment and the treatment of other territories?

Article IV of Title Two of the Compact will place the freely associated states into a position equivalent with the territories of the United States in terms of trade treatment. At present, the Trust Territory does not qualify for this treatment.

6.44.C. If Palau ever constructs an oil storage/transshipment facility, would oil or petroleum products be exempt from any custom duties?

The United States does not place a customs duty on refined oil or petroleum products from any nation and would therefore not exact one on like Palauan products, since the Compact would extend most-favored-nation treatment.

6.44.D. Can these provisions be unilaterally modified by the U.S.?

Products of the freely associated states could enter into the customs territory of the United States duty-free in one of two ways. First, they would enter duty-free if the United States did not levy a duty on the product generally. Secondly, under the provisions of Headnote 3(a) of the Tariff Schedules of the United States, which would apply to the freely associated states pursuant to Section 242 of the Compact. Products which derive more than 30% of their finished value from one of the Freely Associated States may also enter duty-free. In the latter case, however, the President of the United States, pursuant to U.S. statute, has the authority to remove the applicability of Headnote 3(a) on a product-by-product basis. To this extent, therefore, the provisions of Article IV could be unilaterally modified by the United States as to the extent of product-coverage.

6.45. Section 241. What is the effect of not including the FAS in the customs territory of the U.S.?

Section 241 of the Compact excludes the freely associated states from the customs territory of the United States and thereby has the effect of defining products from the freely associated states which enter the customs territory of the United States as imports. This section puts the freely associated states in the same position as the United States territories of Guam, American Samoa and (prospectively) the Northern Mariana Islands, all of which are specifically excluded from the customs territory of the United Staes.

6.46. Section 242. What is the practical consequence of treating the FAS as if they were insular possessions of the U.S. in the meaning of General Headnote 3(a) of the Tariff Schedules of the U.S.?

The practical consequence of Section 242 of the Compact is that the Freely Associated States would receive the same benefits in terms of duty-free entry of products into the customs territory of the United States as are available to the territories of the United States. If benefits for the territories change in the future, they would change automatically and to the same degree for the freely associated states.

Article V

Finance and Taxation

6.47. Section 251, it is noted that a currency transitional period is provided. Is it contemplated by the Governments of the FAS that they will use some legal tender other than U.S. currency?

Section 251 provides that United States currency will be the official circulating legal currency of the Freely Associated States and that the institution of any other official currency by any of the freely associated states shall take place only in accordance with a currency transitional period agreed to by the United States. It is not now contemplated that any of the freely associated states will act to institute its own currency.

6.48. Sections 252-255. How precisely do the tax provisions work?

Sections 252 through 255 of the Compact provide for the taxation relationship which will exist between the United States on the one hand and the freely associated states on the other hand. The major elements of these taxation sections are the following:

-- That U.S. citizens, except U.S. Government employees and U.S. military personnel, who are physically present in a freely associated state for 6 months or more of the tax year are exempt from U.S. tax if they pay taxes to the local freely associated state government. For that reason, U.S. citizens will have an incentive to locate in the freely associated states and to open businesses there.

-- That the citizens of the freely associated states may invest in U.S. stocks and bonds without paying Federal tax on the interest. This provision will allow the freely associated state governments to market their bonds in the U.S. at lower rates of interest than would be possible in foreign bond markets.

-- That Section 936 of the Internal Revenue Code is extended to the freely associated states. This provides an incentive to U.S. corporations to invest there. Section 936 currently applies to U.S. companies operating in Puerto Rico, Guam, and American Samoa.

6.49. Section 255. Will this provision create some sort of tax haven for U.S. corporations who incorporate in the FAS?

Section 255 of the Compact will provide a tax incentive to U.S. corporations which invest in the Freely Associated States but to no greater extent than the incentives which now exist in U.S. statute for the same purpose in Puerto Rico, Guam and American Samoa.

TITLE THREE

SECURITY AND DEFENSE RELATIONS

Article I

Authority and Responsibility

6.50.A. Section 311. Why does the Government of the U.S. need full authority and responsibility for security and defense matters in relation to the FAS?

The Administration views our defense and security concerns in Micronesia within the context of our over-all defense posture in Asia. The Trusteeship was established as a "strategic trusteeship" precisely because of our defense concerns for this vast area in the Central Pacific. The U.S. defense and security interest in Micronesia remains two-fold: first and foremost to foreclose use of this strategic area to the military forces of a hostile power; and second, to continue our current military activities while retaining the option to modify those activities in the future.

6.50.B. In a world of changing trade patterns and changing technology, is the U.S. strategic interest in Micronesia less than it once was?

While there have been significant technological advances in the last thirty-five years, especially in strategic weapons, the premise upon which the strategic trusteeship was established is still valid. Micronesia is astride the sea and air lines of communications to the Orient. These islands are also strategically located to influence the critical oil transport routes between the Persian Gulf and Japan.

6.50.C. Does our need for security and defense authority and responsibility vary as between FAS?

The requirement for "strategic denial" applies to all of the FAS, and our defense responsibility is uniform throughout the area. However, the levels of current and possible future military activities differ in each FAS. Our main ongoing activity is testing at the Kwajalein Missile Range in the Marshall Islands. A minor activity, the Coast Guard Loran Station on Yap, is also expected to continue operation for a few years. Defense has no plans to significantly increase activities in the Marshalls or to conduct any activities in the Federated States of Micronesia.

Another aspect of our projected military presence in the FAS is the deployment of military civic action teams in the FSM. These teams will be particularly designed and equipped to assist in the development of outer islands.

The Compact and its subordinate agreements will satisfy all foreseeable U.S. defense requirements in the FAS. Section 321(b) provides procedures whereby additional defense requirements can be identified and secured to meet contingencies which cannot now be foreseen.

6.50.D. **Does the U.S. have the responsibility to defend the FAS from threats within the governments concerned, e.g., were there a coup d'etat within the FAS, what would be our responsibility?**

This point is not addressed in the Compact, and the United States would be under no direct obligation to interfere in an internal political situation. A decision to take any such action could only be made only on the basis of the conditions existing at the time.

6.50.E. **What is the stability of the present governments in the TTPI, and how stable will they be post-termination?**

The three constitutional governments have been established on firm democratic principles. Their chief executives and legislative bodies are popularly elected. Many governmental leaders have been trained in the Trust Territory administration. Others gained valuable experience by serving in the Congress of Micronesia. The governments are very stable, and they are developing viable institutions. As expected, each jurisdiction has vocal opposition groups. However, the long-term stability of the governments will hinge mainly on economic factors. For this reason, the types and levels of economic assistance which the Compact provides are extremely important.

6.50.F. **Is unilateral U.S. military intervention in the area of the FAS compatible with U.S. commitment under other international agreements?**

Intervention is perhaps not the most precise term, since the U.S. under the Compact will have complete defense and security responsibility for the FAS. Within this authority the U.S. will have the right to take actions which support our defense obligations throughout the Pacific, including, for example, our treaty of Mutual Security and Cooperation with Japan.

6.50.G. If an armed attack occurs in the FAS, would military action by the U.S. in the area be considered an act of self-defense on behalf of the governments of the FAS?

Yes, if the reference is to an armed attack by an outside power.

6.50.H. With respect to the option to foreclose access to the FAS, what U.S. military forces are available to enforce this option?

It is doubtful that a hostile nation would attempt to test U.S. resolve to foreclose the FAS, since the U.S. would hardly view such an act in isolation. In such an eventuality, a U.S. force appropriate to neutralize the threat would be brought to bear.

6.50.I. Is it contemplated that the governments of the FAS will have their own internal defense forces?

No. The Governments of the FAS will be responsible only for domestic law and order -- a police function. They will also be responsible for enforcing their maritime jurisdictions and may develop capabilities along the lines of our Coast Guard.

6.50.J. After 15 years is it contemplated that the governments of the FAS will maintain military forces in their respective areas?

That question cannot be answered with certainty. If, after 15 years, the FAS desire not to renew the Compact's defense provisions, they will have the option of establishing their own military forces. Any FAS government, however, would still be bound to respect the strategic foreclosure provisions and military use and operating rights agreements with the U.S., which will run for substantially longer terms.

6.50.K. After 15 years, assuming that the FAS becomes independent, will independence be consistent with American security interests in the area?

U.S. security interests in the FAS with regard to both present and projected requirements are protected well beyond the initial 15-year period. This administration has reached agreement with the Marshall Islands Government on a 30-year term for the use of the Kwajalein Missile Range. The foreclosure, or mutual security, provisions in all FAS will remain in effect until otherwise mutually agreed.

6.50.L. Is the TTPI defensible?

Yes.

6.50.M. How many troops would be required to defend the FAS, how much would it cost?

There is no direct and short answer to this question. The size and composition of forces required to defend the FAS can only be determined in response to an actual threat and in the context of our entire Pacific defense plans. At this time there is no such threat.

6.50.N. Can the FAS be defended from: Sporadic terrorist attacks; or an all-out attack?

The ability of the U.S. to defend against terrorist attack anywhere in the world is difficult to estimate. With regard to an "all-out attack", the U.S ability to defend the FAS is based in the context of our over-all Pacific defense posture, as stated in response to the previous question.

6.50.O. To what extent are the military installations in the FAS susceptible to sabotage?

The threat to U.S. defense facilities from sabotage is minimal. They are geographically isolated from outside forces or individuals, and the people there have demonstrated little hostility toward the limited presence of U.S. installations in their areas.

6.51.A. Section 313 concerns the Governments of the FAS agreeing to refrain from actions which the U.S. determines to be incompatible with its responsibility for security and defense matters. Why have we not asked for a consultation provision similar to Section 123 in the conduct by the FAS of its internal affairs?

Section 123 requires the FAS Governments to consult with the U.S. on foreign affairs matters. However, the Section 313 provisions are not limited to FAS foreign affairs activities, and the FAS governments will be required to refrain from any action, foreign or domestic, which the U.S. deems in conflict with its Title Three authority.

6.51.B. What would the Government of the U.S. do were a government of the FAS to enter into a commercial fishing agreement with the USSR?

This hypothetical question has arisen in the course of the negotiations. The U.S. has made it plain to the FAS representatives that in all likelihood we would object under Section 313(a) to an FAS government's entering into such an agreement, particularly if it involved the construction or operation of a land-use facility by Soviet citizens.

6.51.C. In what way are the consultations described in Section 313 designed to avoid this eventuality?

The Compact provides for a full and complete dialogue between the U.S. and each FAS government. To facilitate such consultations U.S. officials will be accredited to the FAS and the FAS governments will have representation in Washington.

6.51.D. Were the government concerned to petsist in a foreign affairs action after the U.S. Government requested it to refrain, what alternative actions would be available to the U.S.?

If this were the case, the FAS government would be in breach of the Compact. The U.S. Government would decide at that time what action to take.

6.52.A. Section 314. What can't the Government of the U.S. do in the FAS that it could do in the continental U.S.?

Unless the FAS government concerned were to agree, the U.S. could not test to dipose of nuclear, toxic chemical or biological weapons. However, the U.S. is party to the Nuclear Test Ban Treaty which limits such activity even in the continental U.S. to underground testing, and has agreed not to develop, produce or stockpile bacteriological (biological) or toxic weapons. We can test chemical weapons in the U.S. The U.S. has destroyed its stocks of biological weapons. The U.S. would not have the right to exercise eminent domain in the freely associated states.

6.52.B. To what extent do these undertakings affect the operation of our nuclear-powered submarines and our nuclear-powered ships?

The Compact and its subordinate agreements will in no way affect the operation of our nuclear-powered submarines and surface vessels. In all areas of the world the U.S. claims the right to traverse the seas to within 3 miles of land. The only restriction on nuclear-powered ships calling in or transiting the FAS is the requirement that the U.S. carry out its activities in a manner not hazardous to public health or safety. These are the same standards by which the U.S. abides thoughout the world.

6.52.C. To what extent do these undertakings affect the operations of our conventional ships and aircraft which have the capacity to carry nuclear weapons?

They will not affect the operations of such ships or aircraft.

6.52.D. To what extent do the prohibitions on toxic chemical weapons and materials affect our ability to utilize conventional ordnance in the FAS?

They will not affect such utilization.

6.52.E. What types of weapons and other material may we store in the FAS?

Any weapon or material in our defense arsenal may be stored in the FAS.

6.53.A. Section 315. To what extent has the U.S. used the TTPI for joint exercises?

Tinian, in the Northern Mariana Islands (NMI), has been used for small-scale joint Navy-Marine Corps training, and another island in the NMI is used for bombing and naval gunfire practice. The land areas which will be included in the FAS have not been used for joint training in the past. The U.S. has from time to time, conducted naval and air training in TTPI waters and airspace.

6.53.B. To what extent do we intend to use these areas for such joint exercises post-termination?

At this time the Department of Defense has no plans to engage in joint exercises in the FAS. However, we would have that right under the various military use and operating rights agreements.

Article II

Defense Facilities and Operating Rights

6.54.A. What specific arrangements for the establishment and use of military facilities and areas are contemplated in the FAS?

The United States and the Marshall Islands have reached agreement on use of the Kwajalein Missile Test Range for up to 30 years.

In the FSM, the U.S. has agreed to terms which will provide for continued use of the Coast Guard Loran facility at Yap for a few years and will make military Civic Action Teams (CATs) available to the FSM government to assist in local development projects. The CATs will not require the use of military facilities or areas, although their base camps will be considered "defense sites" for purposes of the Military Use and Operating Rights Agreement with the FSM.

6.54.B. **What will be the cost of these installations or facilities?**

The cost associated with the first 15 years of use of Kwajalein is $1.9 million annually, as set forth in Compact Section 213(b). This amount will not be adjusted for inflation. Another $7.1 million in the general grant to the Marshalls was previously earmarked for Kwajalein, but is now within the grant funds contained in Section 211.

The only payment to the FSM will be a small rental for the Yap Coast Guard site.

6.54.C. **What is the strategic importance of the Kwajalein Missile Range?**

The Kwajalein Missile Range (KMR) is a long-established U.S. installation and represents a large investment by the U.S. and a capability that cannot be completely duplicated elsewhere. Any relocation would have significant effects not only in money and time, but in the important area of testing new systems such as the MX and any follow on systems. KMR's large land test facilities, optimally positioned throughout the Kwajalein Atoll, permit collection of data in a manner preferable and far superior to open-ocean testing. KMR's unique capabilities enable it to support strategic offensive missile, ballistic missile defense, and space defense testing. KMR will be needed to support numerous major strategic weapon systems tests, meteorological tests, and scientific data collection tests for the foreseeable future.

6.54.D. **Why does the U.S. need contingency use areas in Palau?**

The Compact which the President is submitting to the Congress in early 1984 will apply only to the Federated States of Micronesia and the Marshall Islands. The same Compact, however, was negotiated with representives of Palau, who subsequently signed the Compact. On February 10, 1983, the people of Palau approved the Compact of Free Association by a 62% majority in a UN-observed plebiscite. The Government of Palau has not completed its approval of the Compact due to continued inconsistency between the Compact and provisions of the Palau constitution.

In the Compact which was voted on by the people of Palau, five land areas for contingency United States use were identified. Palau's value in politico-military terms would be increased if U.S. access to bases nearer the Asian mainland were curtailed. Although there is no possibility of complete replication of some of these bases, the Palau options would provide great capability when considered in conjunction with Guam and Tinian. Palau is more than 800 miles southwest of Guam and only 500 miles east of the Philippines.

As noted above, the Palau options are primarily in the nature of an insurance policy, and there has never been a timetable for their exercise. Nonetheless, the U.S. desires to secure these options in the context of a new political status agreement with Palau since they would comprise an important aspect of any new relationship which we might enter with Palau.

6.54.E Why is not Palau currently being used for military purposes?

As noted above, the requirements in Palau are in the nature of insurance against our loss of base-rights elsewhere in the Pacific. Palau is not currently being used for military purposes (except that under the Trusteeship the area is foreclosed to third-country military use) because the U.S. has adequate existing bases which meet current requirements.

6.55 Section 322. What will happen to the fixed and floating aids to navigation currently in the TTPI which will not be needed for the exercise of U.S. authority/responsibility under Title Three?

The U.S. Coast Guard currently maintains aids to navigation (buoys) in Micronesia. Compact Section 322 provides that the U.S. will continue to maintain at least those buoys which are of a defense interest to the U.S. The U.S. is committed to convert the remaining buoys to a type which can be maintained by the the FAS within their own local resources.

6.56. Section 323. Why does the U.S. need a SOFA with the FAS?

The primary purpose of a Status of Forces Agreement is to protect the legal rights of U.S. military personnel stationed in foreign countries. A general SOFA, patterned on other such agreements with foreign nations, will recognize our total responsibility for FAS security and defense and govern the legal aspects of our current and future military presence.

Article III

Defense Treaties and International Security Agreements

6.57.A. Section 331. To what extent will our allies be required to treat an attack on Micronesia as an attack on the U.S. and thus as an attack on them?

Our allies would not be required to treat an attack on the FAS as an attack on them.

6.57.B. What Treaties and agreements are involved in this Section?

The list of U.S. treaties and agreements embodied in Section 331 is attached as appendix B.

Article IV

Service in the Armed Forces of the United States

6.58.A. Section 341. How does this provision change the current status of TTPI citizens with regard to volunteer service in the U.S. military?

Compact Section 341 will permit FAS citizens who are eligible to enter the U.S. under the provisions of Section 141 to enlist in the U.S. Armed Forces. At present, TT citizens have to come to the U.S. as aliens lawfully admitted for permanent residence (i.e., obtain alien registration or "green card") before they may enlist. This is often a time-consuming process, requiring several years.

6.58.B. Will FAS citizens be treated differently than other non-resident aliens?

No.

6.58.C. Can service members from the FAS become U.S. military officers?

Yes. However, they will first have to become U.S. citizens

Article V

General Provisions

6.59. A. Section 351, 352. How will these Joint Commissions work?

The Joint committee system has worked very well in coordinating our defense operations with host-country acitivities. It provides an opportunity for the Senior U.S. Commander, in this case CINCPAC or his representative, to meet on a regular basis with the senior leadership of the country concerned and discuss mutual problems. Supporting this structure are lower-level committees made up of local governmental leaders and base commanders. Should a problem arise which cannot be resolved at the CINCPAC level, the FAS government would have the option of raising the problem to the Secretary of Defense for resolution.

6.59. B. **What happens if disputes are not resolved?**

If a dispute cannot be settled in accordance with the procedures outlined in Compact Section 351, then the procedure outlined above would apply. In no case would a dispute arising under the implementation of Title Three or its related agreements be subject to the arbitration provisions of Article II of Title Four of the Compact.

6.60. A. **Section 353. Does this proposition represent an effort the part of the Governments of the FAS to retain neutrality in the time of an international conflict?**

No. Subsection 353(a) simply states that the U.S. cannot include the FAS in a declaration of war without their consent.

6.60.B. **In Defense's opinion, does the security and defense of the United States require the neutrality of the FAS, or their affirmative friendship?**

The key elements in the defense and security relationship with the FAS are the rights which the U.S. retains both in the Compact and the Military Use and Operating Rights Agreements. In the event of hostilities, the major contribution which the FAS would make is the free and unhindered use of their land, airspace and waters to U.S. forces. Whether the FAS joined the U.S. in a state of war or remained neutral would not affect the exercise of these U.S. rights.

6.60.C **In this regard how are U.S. security and defense interests insured under the Compact?.**

Title Three of the Compact secures U.S. defense and security interests for a period of 15 years. Second, U.S. defense rights are further extended with regard to each of the FAS in bilateral military use and operating rights agreements. The terms and provisions of these agreements, and the foreclosure concept which appears in both the Compact and the subsidiary agreements are discussed above.

6.61.A. **Section 411. Does this provision survive breach of the Compact itself?**

Yes. U.S. defense rights are binding on the parties for an initial 15-year period, regardless of the survival of other aspects of the free association relationship. It should be noted, however, that any agreement of this nature requires good-faith implemenation by both sides.

6.61.B. What would constitute a breach of the Compact by the U.S.?

Any answer would necessarily be speculative; technically speaking, only an FAS government could allege a breach. One obvious area, however, would be a failure by the U.S. to provide agreed levels of economic assistance.

TITLE FOUR -- GENERAL PROVISIONS

Article I

Approval and Effective Date

6.62.A. Section 411. What are the constitutional processes contemplated with reference to approval of the Compact by the Government of the U.S.?

The Compact will be submitted to both Houses of Congress as a joint resolution. If approved by a majority of both houses, it will be signed by the President, whereby it will be enacted into law. The same procedure was followed for the approval and enactment into law of the Covenant to Establish a Commonwealth of the Northern Mariana Islands Political Union with the United States (P.L. 94-240).

6.62.B. Is it the intention of the Administration that the Compact will become law upon its approval by both Houses of Congress?

The Compact will have the status of a U.S. public law (see Compact Section 471(c)) as well as the status of a Congressional-Executive international agreement.

6.62.C. To what extent is it intended that the Compact be self-executing?

The Compact will be self-executing except where subsidiary Executive agreements are specifically provided for in the Compact.

6.62.D. Will new legislation be required to execute this provision of the Compact?

No, since the Compact itself will be enacted into law by the Legislature and Executive.

6.62.E. To what extent will Congress be required to amend existing legislation to conform that legislation with the Compact?

Amendments to existing legislation are not considered necessary since enactment of the Compact as a public law will accomplish the required amendments. However, as a matter of clarity, subsequent legislation could be enacted which would list those laws which had been applicable to the TTPI but which would not apply to the FAS.

6.62.F. **What action will Congress be expected to take with regard to reviewing the subsidiary agreements?**

The Administration will submit all subsidiary agreements to Congress at the same time it submits the Compact. Congressional approval will not be required either for Executive Agreements authorized in the Compact (such as the Federal Programs Agreement) or those executed under the President's own authority (such as the SOFA). The language of the agreements subsidiary to Compact Sections 175 (extradition) and 177 (Marshall Islands nuclear claims) and the portion of the language of the Federal Programs and Services Agreement having to do with the economic regulation of civil air transportation have been incorporated into the Compact by reference and will therefore be enacted into law with the Compact.

6.62.G. **Does the U.S. Government have any right to property in the TTPI which it can be characterized as having "given away" in the Compact?**

No. The U.S. is trustee in the TTPI, not the sovereign. TTPI public land has been returned to local land authorities (to the extent that the TTPI had an interest in such land). U.S. Government real property interests are obtained by leases in the TTPI and will be similarly obtained under the Compact. Personal property for which the U.S. determines a continuing requirement will be specifically retained pursuant to the subsidiary agreement set forth in Section 234 of the Compact.

6.62.H. **Do we have sovereignty in Micronesia which one can claim that we are surrendering under the new Compact?**

The U.S. is trustee in the TTPI, not sovereign.

6.62.I. **Why is it necessary for the people of the TTPI to vote on this new arrangement?**

The U.S. and the FAS can best secure international recognition of the new status by meeting the international legal requirement that the new status reflect the "freely expressed wishes of the people" (U.N. Charter, Article 76). Plebiscite votes observed by the U.N. is the best way of demonstrating that this standard has been achieved.

6.62.J. **What action would the Administration contemplate should the Compact not receive a majority of the ballots cast in the plebiscite in any particular voting jurisdiction?**

The USG and the government of the jurisdiction whose voters had rejected the Compact would enter into further negotiations to establish a mutually agreeable political status that would provide the basis for terminating the Trusteeship as regards the jurisdiction concerned. Should the government concerned indicate interest in seeking independence, the United States would negotiate a bilateral agreement to protect its security and defense interests before it would consent to independence for that jurisdiction. In fact, each of the juriscitions voted in favor of the Compact in United Nations-observed plebiscites.

Article II

Conferral and Dispute Resolution

6.63. Section 424. Why has the U.S. committed itself to binding arbitration?

Binding arbitration allows for the expeditious, decisive settlement of disputes without resort an outside forum. The participation of both sides on the three member Board increases the likelihood that arbitual decisions will be accepted. Arbitration is a dispute-settlement mechanism particularly suited to the special relationship of free association. Arbitration will not be employed, however, in disputes involving security and defense, where the U.S. unilaterally retains the ultimate power of decision.

Article III

Amendment

6.64.A. Sections 431-432. Can amendment be made without the specific approval of Congress?

In determining whether a particular amendment with respect to the U.S. would constitute an agreement that could be undertaken by the Executive alone or would also require action by the Congress, a number of factors, including the scope of USG obligations affected, will be considered. The determination will have to be made on a case-by-case basis. Congressional approval would be required, for example, for significant changes in the economic relationship; executive action could suffice for various changes, for example, in the provisions establishing the joint military committees. The Executive will typically consult Congress before any signifiant amendments are effected, even where formal Congressional action would not be required.

6.64.B. What is the extent of Executive Branch discretion under this article, i.e., can the President conclude an Executive Agreement with the FAS on a government-to-government basis and bypass the Congress?

In appropriate cases, an Executive Agreement could modify aspects of the Compact, e.g., by amending the SOFA; however, the Executive acting alone could not effect modifications of basic relationship involving broader USG obligations related to areas over which the Congress exercised authority under the Constitution.

Article IV

Termination

6.65. Sections 441, 442 and 443. What extent will the Congress of the U.S. be involved in termination of the Compact?

U.S. practice regarding treaties and other international agreements indicates that either the Executive, acting unilaterally; or the President and Senate through exercise of their treaty powers; or Congress, by passing inconsistent legislation, can terminate international agreements.

Article V

Survivability

6.66. Section 452. Should the Compact be terminated by the Government of the U.S., unilaterally, why have we agreed to the survivability of Article I and Section 233 of Title Two?

This provision recognizes the interrelation between our authority and responsibility for security and defense and our financial commitment. Further, it protects the economic and political stability of the terminating entity, an essential U.S. policy goal. Section 233, which provides authority to the Government of the United States to audit the use of Compact funding by the freely associated states, is considered to be an important adjunct to the economic assistance and would therefore continue in effect for its original term.

6.67.A. Section 453. What is contemplated by the phrase "annual amounts not less than 50% of any remaining annual amounts specified in Sections 211 and 216"?

This phrase appeared in the Compact as initialed by the U.S. and the Marshall Islands on January 14, 1980, and it represented the floor for financial assistance in the event

6.70.C. What will be the legal status of the agreements before and after the Compact is approved?

The Agreements will come into effect simultaneously with the Compact and will have the status of international agreements, concluded pursuant to Congressional authorization.

6.69.D. Can the Executive Branch modify these agreements without specific Congressional approval?

Yes, provided that such amendment is not inconsistent with Congressional authorization as set forth in the Compact.

Article VII

Concluding Provisions

6.71.A. Section 471. Re: Section 471(a), do the constitutions of the FAS contain language that would lead the U.S. to believe that those governments do not have full authority under their respective constitutions to enter this Compact and its related agreements?

This Compact provision assures the U.S. that related agreements which address specific constitutional issues are consistent with domestic laws in the FAS. In the FSM, the constitutional provisions in question relate to (1) a claim to jurisdiction over a 200-mile marine space from an archipelagic baseline; and (2) a harmful substances prohibition.

6.71.B. Re: Section 471(b), what steps does the Government of the U.S. need to take to insure conformity of its laws, regulations and administrative procedures with the provisions of this Compact?

The Compact will be submitted to Congress and approved in a form that will effect all necessary changes to U.S. laws and regulations.

APPENDIX A

COMPACT OF FREE ASSOCIATION

United States economic assistance to the Marshall Islands and the Federated States of Micronesia

$ IN MILLIONS

FY 19	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	TOTAL
MARSHALL ISLANDS																
Current Account	18.90	17.90	17.90	17.90	17.90	15.60	15.60	15.60	15.60	15.60	13.80	13.80	13.80	13.80	13.80	237.50
Capital Account	10.50	10.50	10.50	10.50	10.50	8.80	8.80	8.80	8.80	8.80	7.60	7.60	7.60	7.60	7.60	134.50
Kwajalein Impact	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	28.50
SUBTOTAL	31.30	30.30	30.30	30.30	30.30	26.30	26.30	26.30	26.30	26.30	23.30	23.30	23.30	23.30	23.30	400.50
FEDERATED STATES OF MICRONESIA																
Current Account	42.60	39.60	39.60	39.60	39.60	34.60	34.60	34.60	34.60	34.60	27.60	27.60	27.60	27.60	27.60	512.00
Capital Account	24.00	25.00	25.00	25.00	25.00	21.00	21.00	21.00	21.00	21.00	17.00	17.00	17.00	17.00	17.00	314.00
SUBTOTAL	66.60	64.60	64.60	64.60	64.60	55.60	55.60	55.60	55.60	55.60	44.60	44.60	44.60	44.60	44.60	826.00
SPECIAL CATEGORIES																
Program Grants																
Sec. 177(b)	150.00															150.00
Sec. 213(b)	0.16															0.16
Sec. 216	6.70	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	5.37	81.87
Sec. 221(b)	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	150.00
Federal Services																
Sec. 122	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	0.28	4.26
Sec. 223	8.30	6.30	4.88	2.46												21.94
Sec. 232	8.90	10.10	11.30	12.60	13.60	14.90	16.10	17.60	18.90	20.20	21.40	22.70	23.90	25.20	26.50	263.90
SUBTOTAL	184.35	32.05	31.83	30.71	29.25	30.55	31.75	33.25	34.55	35.85	37.05	38.35	39.55	40.85	42.15	672.13
TOTAL	282.25	126.95	126.73	125.61	124.15	112.45	113.65	115.15	116.45	117.75	104.95	106.25	107.45	108.75	110.05	1898.63

Current Account and Capital Account amounts will be adjusted for inflation using the formula set forth in Compact Section 217.

Funding provided by Compact Sections 122, 177, 221, 223, and 232 is not subject to the full faith and credit provisions of Compact Section 236.

U.S. Defense and Security Treaties Applicable under the Compact of Free Association

a. Agreed minute to the Treaty of Mutual Cooperation and Security initialed, January 19, 1960.

b. Agreement relating to the Location and Operation of a Temporary Japanese Downrange Station on Kwajalein Island pursuant to an exchange of notes at Tokyo, March 27, 1974, as modified and extended May 20, 1977.

c. Korean Mutual Defense Treaty, signed October 1, 1953.

d. Philippines Mutual Defense Treaty, signed August 1951, as amended.

e. Treaty with the USSR on the Limitation of Anti-ballistic Missle Systems, signed May 26, 1972.

f. Interim agreement on certain measures with respect to the Limitation of Strategic Offensive Arms with Protocol, signed May 26, 1972.

g. Basic principles of Negotiations of the Further Limitation of Strategic Offensive Arms, signed June 21, 1973.

h. Protocol of the Prohibition of the use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, dated June 17, 1925.

i. Geneva Convention for the Amelioration of the Wounded and Sick Armed Forces in the Field, dated August 12, 1949.

j. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, dated August 12, 1949.

k. Geneva Convention relative to the Treatment of Prisoners of War, dated August 12, 1949.

l. Geneva Convention relative to the Protection of Civilian Persons in the Time of War, dated August 12, 1949.

m. Security Treaty between Australia, New Zealand, and the United States, signed September 1, 1951.

n. Treaty of Peace with Japan, signed September 8, 1951.

o. The Antartic Treaty, signed December, 1959.

p. Treaty banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water of August 5, 1963.

q. Treaty on principles governing the activities of states in the Exploration and Use of Outer Space, including the Moon and Other Celestral Bodies of January 27, 1967.

r. Agreement on the Rescue of Astronauts, and the Return of Objects Launched into Outer Space of April 22, 1968.

s. Treaty on the Non-proliferation of Nuclear Weapons of July 1, 1968.

t. Treaty on the Prohibition of the Emplacement of Nuclear Weapoons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof of February 11, 1971.

u. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of April 10, 1972.

Official Committee File
SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
AUG 27 1984

THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

August 21, 1984

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

After your Committee's hearing on the Compact of Free Association (SJR 286), the Committee forwarded 356 questions for written response by the Administration. I am pleased to enclose with this letter our answers to these questions. You will notice that we have used a format which highlights the questions and displays the answers in normal typeface. In some cases, one answer responds to more than one question and appears after the last question in the series to which it responds.

I hope the Committee will find the enclosed information useful during its consideration of the Compact of Free Association. Please do not hesitate to contact me should you or the members of the Committee require additional information.

Sincerely,

Fred M. Zeder II
Ambassador

Enclosure:
As Stated

ADMINISTRATION RESPONSES TO
QUESTIONS RAISED
DURING
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARING ON
THE COMPACT OF FREE ASSOCIATION

MAY 24, 1984

Q. There are a number of what I refer to as transition issues which were not included in the Administration's budget for FY 85 although you did include funding for the Compact. Did you simply expect Congress to fulfill these commitments?

A. At the appropriate time, the Administration will identify and request funds for those items which we believe should be funded as part of the transition to free association.

Q. Over the years monies have been borrowed from the CIP to cover operations resulting in carry-over deficits. How much will be required to cover these deficits and when does the Administration plan to request funds?

A. The Governments of Palau, the Marshall Islands and the Federated States of Micronesia have accepted the responsibility for deficits incurred after the beginning of FY 1982. The size and nature of the pre-FY 1982 accumulated deficit is being investigated by the Trust Territory Government. This review must be completed and reviewed by the Administration before we decide to seek necessary funds for this purpose.

Q. While the recent budget submission includes programs in local administration of programs and financial management it appears that additional technical assistance is needed. Would you outline what activities are currently underway and whether such assistance would continue under the Compact?

A. Attached as Appendix A is a summary description of the technical assistance programs of the Department of Interior in the Trust Territory as of December 31, 1983. With respect to technical assistance under the Compact, all agencies and institutions of the executive branch will receive authorization to provide technical assistance to the Freely Associated States under Compact Section 226. Thus, the range of technical assistance available to the Freely Associated States will increase upon implementation of the Compact.

Q. What is the current status of negotiations with Palau?

A. We are continuing our negotiations with Palau and have reached agreement on the Compact and its separate agreements with the Palauan representatives. It now remains for the people and government of Palau to approve the Compact before it can be considered by the United States Congress.

Q. Does the Administration plan to implement any of the provisions, such as financial assistance, prior to the effective date?

A. No.

Q. How does the requirement for an economic development plan relate to the provision of assistance?

A. United States concurrence in the plans are conditions precedent to the release of Compact funding.

Q. Does the U.S. have to concur in any changes or amendments to the plans and if not what would prevent non-economic development items from being included?

A. No, but any amendments must be in conformance with provisions and requirements of the Compact, specifically those in Compact Section 461 relating to the current account, the capital account and the development plans themselves.

Q. If there is a period between termination of the Trusteeship and the effective date of the Compact how do you plan to handle assistance?

A. It is the Administration's intention to reach agreement with the other signatory governments on an effective date which will occur in conjunction with the date of termination of the trusteeship. We therefore do not forsee that such a hiatus period will exist.

Q. What consultation do you plan to have with members of this Committee in agreeing to an effective date, implementing the Compact, and taking into account any procedures with respect to the United Nations?

A. Full and prior consultation.

Q. What agency will make the determination under Section 3 on funding for Palau?

A. Generally, agencies authorized to make grants for activities in the trust territory either have a formula for allocating funds as between the Federated States of Micronesia, Marshall Islands and Palau, or they make the funds available to the Trust Territory Government for allocation. Under Section 3, the agencies involved will determine the level of funding which would have gone to Palau out of the current or the next fiscal year's budget, as the case may be. If they need or desire to utilize the Trust Territory Government as the vehicle for determining a formula for allocating funds, such would be appropriate as well.

Q. What were the results of the plebiscites?

A. The people of the Federated States of Micronesia approved free association as set forth in the Compact of Free Association by a margin of 79% in a plebiscite held throughout the Federated States of Micronesia on June 21, 1983. The people of the Marshall Islands approved free association as set forth in the

Compact of Free Association by a margin of 58% in a plebiscite held throughout the Marshall Islands on September 7, 1983.

Q. What political education efforts were undertaken?

A. The Government of the United States contributed $300,000 and $1 million for the Marshall Islands and the Federated States of Micronesia, respectively, to conduct their plebiscites, the political education programs and the tabulation of votes. The Government of the United States, however, had no involvement in the locally conducted programs. The political education programs consisted of handouts of copies of the Compact and the subsidiary agreements in local dialects, community meetings and debates. Many of these activities were observed by United Nations visiting missions, sent to the Marshall Islands and the Federated States of Micronesia specifically to observe the plebiscites. It is the view of the United States that the political education programs and the plebiscites conducted in the Marshall Islands and the Federated States of Micronesia constitute a valid expression of the wishes of the peoples of these islands with respect to their future political status. The reports of the U.N. Observer Missions conclude that the public information programs were successful and properly run. The open access to public radio and open format of public meetings was noted in particular. Copies of these reports are attached, along with a copy of the report of the American Enterprise Institute which sent observers to the plebiscites under the sponsorship of the Department of Interior. On the basis of these reports, we feel certain that there is no basis for any suggestion that the locally conducted activities were not conducted in a fair and impartial manner, or that the results do not reflect the wishes of the peoples concerned.

Q. What was the nature of approval by the "Governments"?

A. In accordance with the constitutions of the Marshall Islands and the Federated States of Micronesia, the plebiscite results were certified to the Government of the United States on December 10 and September 14, 1983, respectively. The ratification procedures for the Federated States of Micronesia are set forth at Article IX, Section 4 of the Federated States of Micronesia Constitution, and the procedure for the Marshall Islands is set forth at Article V, Section (1)(3)(d) of their Constitution. In the Marshall Islands, the procedure included approval of the Compact and its related agreements by the Cabinet and Nitijela (national legislature) of the Marshall Islands. In the Federated States of Micronesia, the Compact was approved by the required three-fourths of the state legislatures and by the national Congress of the Federated States of Micronesia.

Q. What is the background of the decision --

- to enter into and conclude separate agreements with the Federated States and Marshalls?

A. In their approach to the implementation of the new political status, the Micronesian and Marshallese negotiators preferred not to accept agreements which contained only broad statements as to the rights and obligations of the governments, or which merely enabled the governments to reach agreement on implementing arrangements after the new political status had been established. In every area, they sought agreement on the details of implementation, and satisfying this legitimate interest on their part could not reasonably have been accomplished in the text of the Compact itself. Thus, as is common practice in connection with international agreements, it was agreed that where appropriate the provisions of the Compact would specifically require separate agreements regarding the manner in which the larger commitments in the Compact would be carried out. Of course, separate agreements relating to Compact implementation can be entered into in addition to those called for in the Compact.

- to conduct the plebiscites on different dates?

A. The plebiscites were conducted on different dates because preparation on the part of the peoples and governments of Palau, the the Marshall Islands and the Federated States of Micronesia for their internal approval processes developed at different times. A failure to accommodate their desire to engage in acts of self-determination in accordance with their own preparations would have been arbitrary.

Q. What was the role of the United Nations in the approval process in the Federated States and the Marshalls?

A. The attached reports from the United Nations Trusteeship Council observer missions contain a full description of the role and activities of the missions while in the Marshall Islands and the Federated States of Micronesia. From the United States point of view, the role of the United Nations missions was to observe and make findings as to whether or not the plebiscites were conducted free of coercion, and determine if the people were provided with an opportunity to make an informed choice. We believe the missions accomplished this role admirably.

- Who participated in the Visiting Mission?

A. The missions were organized by the Trusteeship Council of the U.N. and were composed of representatives from the United Kingdom, France, Papua New Guinea and Fiji.

- What conclusions, if any, did they reach?

A. While issues were noted, there were no problems or conditions which could reasonably be viewed as having had any impact on the outcome of the plebiscites. The final assessment was that the plebiscites were conducted free of coercion and in a fair and impartial manner. Thus, the plebiscites are to be viewed as valid acts of self-determination in which the peoples concerned were informed of their choices and freely expressed their wishes as to their future political status.

- Did the observing team note any deficiencies in the plebiscites and, if so, what were they and how did the concerns affect the results?

A. The preceding answer responds to this question. Please refer to the attached reports for further information.

Q. Is there a necessity to submitting the agreement for one part of the Trust Territory to other parts for approval?

A. It is the view of the Administration that submitting the future political status agreement for one part of the trust territory for approval in another part would be inconsistent with the obligations of the United States under the Trusteeship Agreement "to promote progress of the inhabitants of the trust territory towards self-government or independence in accordance with the unique circumstances and freely expressed wishes of the peoples concerned." The development of separate constitutional governments for the four jurisdictions that have been established within the trust territory fulfills the United States obligation to facilitate the creation of democratic institutions in the trust territory. Establishment of those governments occurred as a result of democratic political developments among the peoples of these areas, and the approval process for these constitutions was recognized by the international community as a legitimate one. Each constitutional government signatory to the Compact had the the capacity and competence to negotiate a future political status agreement and approve it in accordance with its constitution. It is the Administration's view that the Compact, having been so approved by the governments and peoples concerned, provides a politically and legally valid basis for termination of the trusteeship with respect to each of these peoples and their democratically instituted governments.

It is appropriate to note that while the Compact itself is a multilateral document, it defines two bilateral relationships which will evolve under the terms of the agreement from the relationship which has existed between the United States and the peoples concerned during the trusteeship. The rights and obligations associated with these two government-to-government relationships are distinct. This fact is underscored by the different arrangements contained in the Compact to accommodate the different needs and aspirations of the Federated States of Micronesia and the Marshall Islands, respectively. Each government signatory to the Compact negotiated and signed the agreement on behalf of its peoples only. The terms of the agreements as presented in the plebiscites make it clear that with respect to duration of free association, financial assistance elements, allocation of authority and responsibility, legal relationships and provisions for conducting government-to-government relations, two separate relationships will exist. It is the position of each of the governments concerned and of the United States that the peoples of the Marshall Islands and the Federated States of Micronesia voted for free association as defined in the Compact as a future political status for themselves.

Q. What were the results of the February plebiscite?

A. The people of Palau voted by 62% to approve free association as defined in the Compact as their future political status upon termination of the trusteeship.

Q. What interpretation do you place on the results of -

- the vote on the Compact itself?

A. The United States regards the plebiscite results as a valid act of self determination. However, those results and the Compact which was voted upon will not provide a basis upon which the United States constitutional process for approval of the Compact can proceed unless the Government of Palau completes its constitutional approval process on the basis of those same results. Since this has not occurred, the United States has continued to negotiate with Palau with a view toward reaching agreement on terms which would enable the approval process for the people of Palau and their government to be fully completed.

- the vote on Section 314?

A. In an internal referendum conducted in conjunction with the plebiscite for the purpose of achieving compatibility between the Compact and Palau's constitution, 52% the voting electorate approved the agreement subsidiary to Compact Section 314. Since the explicit terms of the ballot required that 75% of the voting electorate must approve the Section 314 agreement before the Compact could enter into force, the situation outlined in the preceding answer obtains.

- the vote on alternatives?

A. Slightly more than half of those voting in the plebiscite availed themselves of the opportunity to vote on Question 2, which was advisory. Of those voting, 55% endorsed a relationship with the United States closer than free association, and 45% endorsed the political status of independence.

Q. Do you expect to resolve an agreement with Palau in the near future and should we delay consideration of the Compact until that time?

A. The Administration cannot predict with certainty when the people and Government of Palau will approve the Compact of Free Association and its separate agreements. Therefore, it urges Congress to consider and enact the Compact of Free Association for the Marshall Islands and the Federated States of Micronesia independent of events in Palau.

Q. What is the current status of the Northern Mariana Islands?

A. The Northern Mariana Islands is a component of the Trust Territory of the Pacific Islands and remains fully subject to the Trusteeship Agreement. Upon termination of the trusteeship agreement, the Northern Mariana Islands will become a territory of the United States in accordance with the terms of the Northern Mariana Islands Commonwealth Covenant (P.L. 94-241).

Q. What are the Administration's plans with respect to Section 902 of the Marianas Covenant and Section 2 of Public Law 94-241?

A. The Administration intends to fulfill the obligations of the United States specified in these sections.

Q. What is the current status of the Proclamation to resolve the citizenship problems in the Marianas under Public Law 98-213?

A. This proclamation was issued by the President in June of 1984.

Section 1 of the Resolution approves the Compact and authorizes the President to agree to an effective date thereafter to implement the Compact.

Q. Who are the other parties to the agreement?

A. The effective date of the Compact will be mutually agreed by the Government of the United States, and the governments of the Freely Associated States, as specified in Compact Section 411.

Q. Does the Administration contemplate a single effective date for both the Marshalls and Federated States of Micronesia?

- If so, how do you plan to reconcile such action with Section I?

- If not, why do you want to defer implementation of any provisions which could be done within the framework of the Trusteeship Agreement and pursuant to existing authorizations?

A. Although not specifically required by Compact Section 411, the Administration does contemplate that the Compact will enter into force simultaneously for both Freely Associated States. We see this solution as entirely consistent with the terms of SJR 286 as introduced.

Q. Is the authorization to implement subject to appropriation?

A. Congressional enactment of SJR 286 will provide authorization to the President to agree to an effective date for the Compact and to implement its terms for the United States. Certain Compact assistance is explicitly subject to annual appropriation by Congress and, to that extent, continuing implementation is so subject.

Section 211(b) provides that the expenditure of capital account grants pursuant to Section 211(a) shall be pursuant to an economic development plan concurred in prior to the effective date of the Compact.

Q. - How does this relate to Section I?

A. Most directly, in the sense that the promulgation of national development plans by the Freely Associated States and concurrence in them by the United States is a condition precedent to United States agreement to the Compact's effective date.

Q. - If no plan were developed or concurred in does that mean that all provisions of the Compact are held in abeyance?

A. Yes.

Q. - What is the role of the Congress in approving these plans?

A. In its review of the national development plans of the Marshall Islands and the Federated States of Micronesia, the Administration intends full consultation with Congress, especially with the Committees having jurisdiction over the Trust Territory and the Compact. We do not envision direct Congressional enactment of these plans.

Q. - Does the U.S. have to concur in any amendments, and if not, why not?

A. The requirement for direct United States concurrence in the national development plans does not explicitly extend to subsequent amendments to those plans. This is because any such amendments promulgated by the Governments of the Marshall Islands and the Federated States of Micronesia are required to be consistent with the requirements and provisions of the Compact, including specifically the definitional provisions of Compact Section 461.

Further, the Freely Associated State governments are required to report any such amendments to the Government of the United States in the annual reports they will make pursuant to Compact Section 211.

Q. - Assuming the Compact were approved and an economic plan were not developed or concurred in, how do you plan to provide services?

A. As stated above, promulgation of and United States concurrence in the national development plans will be completed before the Compact enters into force.

Q. Aside from recognition of sovereignty, what is there in the Compact which could not be done currently either administratively or by submission of a budget amendment?

A. The Compact contains many provisions which are amenable to implementation by administrative fiat, by an alteration of the United States support budget or some other means available to the United States in the exercise of its authority under the Trusteeship Agreement. The ingredient primarily lacking in such an approach, and the ingredient upon which the Compact approach is founded, is that of direct and democratic agreement of the peoples of the Marshall Islands and the Federated States of Micronesia.

Q. What does the concluding phrase concerning the United Nations mean?

- What procedures are referred to?

- Is "taken into account" the same as "followed"?

A. Procedures for the termination of the Trusteeship Agreement are not explicitly set forth in that agreement or in the United Nations Charter. Nevertheless, international practice dictates certain procedural patterns for termination of documents similar in nature to the Trusteeship Agreement. In taking these procedures into account, the United States will determine the degree to which they provide a proper method for termination of the Trusteeship Agreement itself.

Q. Must termination of the Trusteeship Agreement precede the effective date and implementation of the Compact?

- Why was not this procedure followed prior to implementing most of the provisions of the Marianas Covenant?

- What is the role of the Marianas and Palau in this process?

A. It is the Administration's intention that the effective date of the Compact and the date of termination of the Trusteeship Agreement will be coincident. The negotiation and approval of the Northern Mariana Islands Commonwealth Covenant preceded by a number of years the completion of the negotiations with the remaining components of the Trust Territory and, given the nature of the political status which the Northern Mariana Islands chose, it was appropriate to bring significant portions of the Covenant into effect prior to trusteeship termination. The authority of the United States to accomplish this result derives from the Trusteeship Agreement itself. In the case of the Marshall Islands and the Federated States of Micronesia, the Administration does not forsee an interregnum period similar to that which has obtained in the case of the Northern Mariana Islands. It remains the Administration's intention to bring about termination of the Trusteeship Agreement at the same time for all elements of the Trust Territory.

Q. - Why, if the Congress were willing to approve the Compact, should not the President be authorized to implement any provisions of the Compact which are not inconsistent with the Trusteeship Agreement, subject to appropriation acts?

A. The Administration's policy of implementing the provisions of the Compact simultaneously with termination of the trusteeship in based in part on its desire to see our relations with the peoples and governments of the present Trust Territory based solely on instruments which they have negotiated with us and approved.

Q. What is the legal status of the Compact both under international law and as a domestic matter?

A. For the United States, the Compact, upon enactment and entry into force, will be a statute law of the United States carrying international obligations.

Q. - As a statute, can any provision be amended or modified other than by an act of Congress and, if so, which provisions and what is the legal analysis to support your position?

A. No.

Q. - Do you distinguish between provisions of the Compact and the Subsidiary Agreements?

A. Yes. The Compact will have the status of a statute law, whereas the subsidiary agreements, unless otherwise specifically provided, are executive agreements.

Q. - Are there any undertakings in any of the subsidiary agreements not supported by provisions in the Compact or which require further action by Congress?

A. No.

Section 111

Q. Does Section 111 have any legal effect or is it merely descriptive?

A. This Section sets forth, in law, the view of the United States with respect to the self-governing status of the Freely Associated States. As such, it is more than "merely descriptive".

Section 121

Q. What are the limitations on foreign affairs referred to in subsection (a)?

A. These relate to the foreign affairs capacity of the Freely Associated States as it concerns the authority and responsibility of the United States for security and defense matters as set forth in Title Three of the Compact and to the procedural requirements attendant to the exercise of their foreign affairs capacity to which the Freely Associated States have agreed in the Compact.

Q. The section analysis you provided is unclear with respect to the provision of services. The analysis indicates that services will take place on a government-to-government basis rather than by direct extension of U.S. domestic programs. Is this statement a reflection of the requirement that the FAS agree to the extension of the service or a characterization that services, to the extent they are provided, are to be provided other than as they would be within the U.S.?

-- If the latter, do all agencies potentially involved have statutory authority to operate other than on a domestic basis?

A. Primarily, the language of the section-by-section analysis is intended to highlight the fact that, under the Compact, the United States will provide any services and programs on a government-to-government basis. Thus, to the extent that a federal program contains individual entitlements, such entitlements would run to the government of the recipient Freely Associated State which could, in turn, agree to honor such entitlements in its acceptance of the program in question.

-- Aside from the requirement for local consent, are not most programs and services provided to States and territories (as opposed to programs provided directly to recipient individuals) provided on a government-to-government basis?

A. Yes, although in the domestic context, Congress retains its right to alter the terms of the programs and services unilaterally.

-- What is the relevance of the foreign affairs capacity to the provision of programs and services?

A. Its relevance is stated in the two preceding answers.

Q. Is the listing of items in 121(b) inclusive or illustrative?

A. Illustrative.

Q. Do the U.S. and FAS agree on any differences between international law and the provisions of Law of the Sea and if so, what differences exist and how will they be handled?

A. When the Compact enters into force, the United States and the Freely Associated States will each be free to pursue their interpretations of international law as it relates to maritime space jurisdiction and the Compact does not prejudice their positions vis-a-vis third states. The Constitution of the Federated States of Micronesia, unlike the Constitution of the Marshall Islands, contains language which could prove inconsistent with international law on the matter of archipelagic definitions. This matter has been resolved in a United States-Federated States of Micronesia bilateral agreement on maritime space jurisdiction.

Section 122

Q. How will the acceptance of persons for training at the Foreign Service Institute be handled?

A. Nominations by the governments of the Freely Associated States will be made in accordance with criteria established for the training program.

Q. How many people do you anticipate?

A. We anticipate that each course will accommodate up to ten Freely Associated State citizens.

Q. Who bears the cost?

A. The United States Government.

Section 124

Q. How extensive do you anticipate U.S. assistance will be under this provision?

A. The Governments of the Marshall Islands and the Federated States of Micronesia have had important experience in foreign affairs activities during the past few years of trusteeship administration and have developed a working capacity to carry out the responsibilities forseen under Article II of Title One of the Compact. Nevertheless, in the first years of the relationship, we anticipate United States Government assistance over a broad range of foreign affairs topics.

Q. What provision is there for consultation with or approval by Congress prior to agreeing to be held responsible?

A. To the extent that United States acceptance of responsibility involves United States law or appropriation, we anticipate full consultation with and concurrence by Congress in such acceptance.

Section 125

Q. Do you plan to inform other governments that the U.S. is not responsible for any foreign affairs actions of the FAS?

A. While it may prove necessary to provide such information on a case-by-case basis, the Administration believes that the Compact itself constitutes adequate notice.

Your answer to questions posed in 1980 on Section 125 states that you plan to consult with Congress only "if circumstances indicate a likely Congressional concern".

Q. Who is the judge of the circumstances?

A. The executive branch, acting on the basis of its intended regular consultations with Congress.

Q. Why would you not commit to consultation with the Congress prior to any agreement to become responsible for or obligated by an action of the FAS in foreign affairs?

A. While we anticipate full and prior consultation with Congress on this matter, we do not believe that an explicit requirement for such is necessary or appropriate in the Compact.

Section 131

You indicated in your response to questions in 1980 that the Administration plans to upgrade or replace the present communication system.

Q. What is the status of the upgrade?

Q. How long will it take to complete the work?

Q. To the extent additional sums are necessary, do you plan to request appropriations or must the FAS assume all costs once the Compact is approved?

A. United States funding for the upgrading of the communications systems of the Marshall Islands and the Federated States of Micronesia will have been provided with Congressional appropriation of the President's funding requests for the Trust Territory. Completion of the work program is expected to be completed in early 1985. Additional communications infrastructure costs will be underwritten by the Freely Associated States which will undoubtedly apply Compact funding to the projects.

Section 141

Q. Would a statute limiting a lawfully admitted person from the FAS from residing in Guam be Constitutional?

A. There would be no necessity for a federal statute of this sort since the Compact recognizes the rights of United States territories to accomplish, on a non-discriminatory basis, the same result in cases where Congress has granted or may in the future grant such authority to the territories.

Q. Who determines the class of persons included under 141(a)(2)?

A. The Government of the Marshall Islands or the Federated States of Micronesia, as appropriate.

Q. What prevents a FAS from determining that it's citizenship is available, at birth, to another class of people, such as any person of Carolinian ancestry?

A. At present, such a determination would be inconsistent with the constitutions of the Marshall Islands and the Federated States of Micronesia.

Q. Would such person be covered?

A. If the constitution of either freely associated were amended to allow the hypothetical result posited in the preceding question, and if the effect could contravene the assumptions of the signatories to the Compact at the time of its negotiation, other provisions of the Compact, including the procedures set forth in Article II of Title Four, could be relied upon to resolve the matter.

Section 142

Subsection (b) provides that denial of entry and deportation must be pursuant to "reasonable statutory grounds".

Q. Is there provision for judicial review?

Q. Must a FAS provide for appeal of an adverse ruling?

A. Judicial review would be available in the court system of the Freely Associated State in question, both of which systems contain appeal procedures.

Section 143

Q. How does this provision apply to dual citizenship?

A. It would have the effect of denying the privileges set forth in Sections 141 and 142 to persons who have citizenships aside from that of the Marshall Islands, the Federated States of Micronesia or the United States.

Section 151-152

Q. Do the immunities and protections provided to the Resident Representative extend beyond the individual to other employees or members of their families?

A. They extend to official employees acting in the representative capacity and to the family members of the representative.

Your response to the questions indicate that "the U.S. representatives will be responsible for dealings with the FAS on all aspects of the free association relationship".

Q. Does this assume the representatives will either perform or supervise line agency functions similar to the present desk officers at TIA?

A. We do not see a parallel relationship between the contemplated functions of the United States Representative and the present activities of the members of the Office of Territorial and International Affairs of the Interior Department.

Q. Do you expect the representatives to become involved in technical assistance?

A. The United States Representative will be the responsible federal official in the country to which he is assigned for representation of the United States Government, for the conduct of the consultations envisioned in the Compact to the extent they take place in the Freely Associated States and for the coordination of United States official activity in the Freely Associated State to which he is assigned, including technical assistance.

Q. Are the representatives independent or will they report to some individual?

- To whom?

- Will that person appoint the representative and if not, who will?

A. The United States Representative will be appointed by, and will report to, the head of the office established in the federal government for the management of the free association relationships and implementation of the Compact.

Section 161

Q. Does this section exempt the United States from complying with any environmental laws which would otherwise apply?

Q. If so which ones?

A. No, since under the terms of the Compact, no United States laws will apply to the Freely Associated States. The Compact does not exempt United States officials from complying with laws of the United States which apply extraterritorially.

Q. In 161(a)(3) other environmental laws will apply as mutually agreed?

A. The laws listed in Section 161(a)(3) will not directly apply or extend to the Freely Associated States. Rather, the Government of the United States, in its activities in the Freely Associated States, will comply with mutually developed and agreed standards which are substantively similar to the standards for behavior set forth in the listed laws.

Q. Would Congressional action be required?

A. The undertakings of Article VI of Title One are self-executing in the sense that no additional Congressional action after enactment of the Compact is necessary for their implementation.

Q. If Congress were to require adherance to certain other laws, could this provision be used to evade such a statutory requirement?

A. Were Congress to enact legislation with extraterritorial extension which regulated actions of the United States Government, it would apply to United States Government actions in the Freely Associated States as well as in other parts of the world on the assumption that the implementation of the legislation did not directly contravene the terms of the Compact.

Q. Why is 161(a)(4) necessary?

A. During the negotiation of Article VI of Title One, the Freely Associated States both believed that a mechanism for judicial review in United States Courts would provide a necessary level of assurance that the United States Government, in its activities, would comply with the standards referred to in Section 161(a)(3). Since standards substantively similar to those included in the laws listed in Section 161(a)(3), rather than the laws themselves, will apply, the need for development of standards and procedures for such judicial review arose and is resolved in the method outlined in Section 161(a)(4).

Q. What do you mean by "in a manner appropriate to" in the first sentence?

A. This conditional language refers to the special governmental relationship which will exist under the Compact between the United States and the Freely Associated States and requires that the mechanisms for judicial review that are developed pursuant to Section 161(a)(4) are consistent with the overall legal framework of free association and take into account the special responsibilities, especially for the defense and security of the Freely Associated States, which the United States undertakes in the Compact.

Q. Is 161(b) an obligation to enforce on the Executive of the FAS or does it also require the local courts of the FAS to issue appropriate orders?

A. The nature of the governmental obligations of the Freely Associated States and the United States set forth in the Compact is such as not to discriminate among branches of the various governments. Thus, the Governments of the Freely Associated States, acting in the fashion prescribed by their constitutions, are required to enforce the standards developed under Section

161(b). In practical terms, enforcement is, in the first instance, a function of the executive authority of government.

In your response to the questions at the 1980 hearing you stated that 161(c) would not involve the Congress but would be effected by Executive Agreement.

Q. What is the purpose of 161(a) if it could be waived under 161(c)?

A. The obligations of the United States Government under Section 161(a), and the reciprocal obligations of the governments of the Freely Associated States under Section 161(b), are not diminished in impact by the inclusion of Section 161(c) which allows the governments, by mutual agreement, to exempt themselves, either completely or as to specific activities, from those obligations. Rather, Section 161(c) makes explicit the implicit understanding that there may be instances where the interests of both governments are served by a procedure different from the one set forth in Sections 161(a) and 161(b).

Q. Do you view 161(c) as an authorization to avoid statutory requirements by entering into an Executive Agreement?

Q. Could it be so used?

A. No. Upon enactment of the Compact, Section 161(c) will constitute a statutorily based authorization for departure from the procedures and requirements of Section 161(a) as to the United States Government. In no case would the modification or supersession authorization be applicable to requirements placed on the Government of the United States by United States statutes of an extraterritorial nature.

Q. Since Congress is being asked to approve the framework of environmental standards on U.S. activities, why should not Congress be involved in elimination or alteration of that framework?

A. In enacting the Compact, Congress will approve not only the framework of environmental standards on United States Government activities in the Freely Associated States, but also a method for the adaptation of the framework to the free association relationship as it is implemented and for its accommodation to special circumstances which may arise.

Q. Do the references to environmental laws in 161(a)(3), mean those laws as of a certain date or does the language mean the U.S. will apply any changes or subsequent modifications?

A. Changes or subsequent modifications to those laws will apply, pursuant to Compact Section 463(b).

Q. In the event Section 161(e) is exercised, do you plan to consult with the Congress prior to making a decision?

Q. Do you plan to furnish the Congress with a copy of the report?

A. The Administration forsees full consultation with Congress as respects any exercise of the authority of the Government of the United States set forth in Section 161(c) and believes that a copy of the report referred to in that Section can be made available to Congress pursuant to existing agreements between the executive and legislative branches for the handling of such material.

Q. Do you view this section as granting the President the ability to exempt any activity from any statutory requirements, imposed outside the Compact?

A. No, although in certain such instances Congress has already granted such authority to the President.

Q. Why would it ever be impracticable to furnish a report to the affected government if this authority were exercised?

A. The information leading to a decision to exercise the authority set forth in Section 161(e) could be of a nature which would prevent its distribution outside of the United States Government.

Q. Do you view Section 161(f) as preventing Congress from enacting legislation to impose additional safeguards on U.S. activities?

A. The purpose of Section 161(f) is to underscore that the laws of the United States referred to in Section 161(a)(3) apply only to the extent and in the fashion set forth in Section 161. Thus, Compact Section 161 provides the sole vehicle for interpretation with respect to United States conformance with the laws.

Q. If the Congress were to determine that the U.S. government should adhere to some minimum standard of environmental care in any of its activities in the FAS regardless of local requirements, do you view this Section as a bar to such a requirement or a means to avoid such a requirement?

A. Article VI of Title One of the Compact was negotiated by the United States and the Freely Associated States over a long period of time and with extreme care. The framework for environmental protection which it prescribes takes into account the interests and objectives of the Freely Associated States as well as the obligations and responsibilities of the Government of the United States. The Freely Associated States agreed to the provisions of this article in order to advance their interest in environmental protection and also to advance their equally important interest in providing a framework in which United States Government programs and activities in the Freely Associated States can benefit them in the most cost-effective fashion. While an alteration of this framework might serve one or another of the objectives of the Freely Associated States, such an alteration would likely upset the balance which Article VI of Title One strikes between those interests. From the point of view of the United States, Article VI of Title One creates a framework for environmental protection which is at once harmonious with the state of law and practice applicable domestically in the United States and supportive of the special obligations and responsibilities of the United States in the Freely Associated States under the terms of the Compact. Whether the imposition of new or additional standards would be inconsistent with Section 161(f) is less important than the potential harm to the mutual interests of the United States and the Freely Associated States that such an imposed standard could cause.

Section 171

Q. In the event the effective date occurs subsequent to the date of termination of the Trusteeship Agreement, does Section 171 continue the availability of authorizations for the Trust Territory, such as the 1954 Act, as amended, into the post-trusteeship period?

A. As stated before, the Administration does not forsee a situation in which the Trusteeship Agreement is terminated prior to the effective date of the Compact.

Q. If the effective date is conditioned on the economic development plans, does this mean that the Trusteeship cannot terminate until such plans are developed and concurred in?

A. Yes.

Q. If the effective date could occur prior to termination of the Trusteeship, does this effectively repeal all present authorizations?

Q. If that is true, how do you plan to fulfill existing commitments such as completion of the CIP, Capital relocation, or the carry-over deficits which must be addressed in order to close the books?

A. As stated before, the Administration does not forsee a situation in which the Compact enters into force prior to the termination of the Trusteeship Agreement.

Q. Do you view this section as a limitation on Congress' ability to extend laws or provide authorizations for the Trust Territory prior to termination or to enact subsequent legislation or provide authorizations in the post-trusteeship period to the extent the affected government agrees?

A. No, in both cases. Since, in the Administration's view, the effective date of the Compact and the date of trusteeship termination are to be coincident, the Compact does not place a limitation on the ability of Congress to extend laws, spend money or provide authorizations for the Trust Territory prior to trusteeship termination. Once the Compact enters into force, Compact Section 224 provides authority for the extension of additional programs, services or other assistance to the extent agreed by the affected Freely Associated State.

Q. In order to maintain the availability of certain programs or assistance, must Congress specifically note that such programs will continue notwithstanding the provisions of Section 171?

A. The appropriate method for the United States to employ in providing for continuity of authorizations after the effective date of the Compact is to note that the action is taken pursuant to Compact Section 224.

Your response to previous questions indicates that the FAS could accept the benefits of subsequent legislation "pursuant to mutual agreement".

Q. Are you attempting to provide Executive Branch discretion to alter, modify, or withhold benefits by refusing to "mutually agree"?

A. As stated above, the vehicle for provision of United States services, programs or other assistance to the freely associated beyond that provided in the Compact is set forth in Compact Section 224. By referring to the "laws of the United States", Section 224 contemplates that mutual agreement to extend additional grants, services and programs to the Freely Associated States will occur for the United States only with the enactment of law.

Q. So long as the affected FAS or individual recipient meets the statutory requirements for eligibility what do you mean by mutual agreement?

A. Compact Section 224 has several purposes, a particularly important one of which is to protect the Freely Associated States from the imposition of federal programs which have in the past or may in the future prove harmful to their citizens. Thus, for example, a Freely Associated State may decide to reject a program not because of an inability to meet eligibility requirements but because it judges the extension of the program would be harmful to the citizens or to the national goals of the Freely Associated State.

Q. If Congress were to provide funds for a particular project at the request of a FAS, such as the hydro project in Ponape, could you effectively impound the funds by refusing to "mutually agree"?

A. The proper temporal locus for executive-legislative discussions on the merits, if any, of additional programs, services or other assistance is before, not after, Congress acts to provide the funding in question. The Administration is confident that the full and regular consultations it forsees with Congress with respect to the approval and implementation of the Compact will allow for identification and resolution of issues such as the one mentioned in the question. Were Congress to enact and the President to approve a law appropriating funds to a Freely Associated State, and it agreed to accept them, the funds could not be witheld by the United States' refusing to mutually agree.

Section 173

Q. How do these provisions relate to the immunities provided the Resident Representative?

A. Compact Section 173 creates a positive obligation on the part of the signatories to the Compact to assure that their laws and regulations are not inconsistent with their undertakings in Article V of Title One, in Articles II and III of Title Two and in the Federal Programs and Services Agreement and in Article II of Title Three and in the Status of Forces Agreement. To that extent, the relationship is direct.

Q. How broad is the coverage for personnel?

Q. How broad is the coverage for property?

A. The extent of coverage envisioned is set forth in the Articles of the Compact and the subsidiary agreements referred to in the previous answer.

Q. Is this section broader or more restrictive than the Foreign Sovereign Immunities Act of 1976?

A. Article V of Title One will confer functional immunity on the United States and Freely Associated State representatives. This is less comprehensive than the general diplomatic immunity to which the question refers.

Section 174

Q. How does Section 174(b)(1) relate to the subsidiary agreement to Section 177?

A. While it may be argued that the results of the two sections are not inconsistent, the obligations of the United States under Section 174 do not extend to the subject matter of Compact Section 177 or its subsidiary agreement which, by their terms, expressly provide otherwise.

Q. What happens to cases pending in the High Court on the effective date of the Compact?

Q. Is there a need to continue the authority and jurisdiction of the High Court until all cases are resolved?

A. Cases pending in the High Court of the Trust Territory of the Pacific Islands as of the effective date of the Compact will be handled in the manner set forth in Section 174, particularly Sections 174(b)(3), 174(c) and 174(d). The Administration believes that by the time the Compact enters into force, the only type of cases pending before the High Court will be those amenable to disposition under Section 174.

Q. How does Section 174(d) relate to the immunities of the Resident Representative?

A. The immunities of the United States Representative are set forth in Article V of Title One which, in terms of its relationship to Section 174, expressly provides otherwise.

Section 175

The separate agreement on Law Enforcement and Extradition has the force of law pursuant to this section.

Q. Can this be modified without the approval of Congress either by statute or as a treaty?

A. Since the separate agreement under Compact Section 175 will have the force and effect of law, it could be modified by the United States, upon mutual agreement with the Freely Associated States, only with the approval of Congress by statute or as a treaty.

Q. Do you have similar authority under other agreements with other countries?

A. Not applicable.

Q. List such agreements and the basis for modifications without submission to Congress.

A. Not applicable.

Section 176

Q. What kind of relief from judgments could the courts of the FAS grant?

A. The courts of the Freely Associated States could grant relief from judgments of the High Court of the Trust Territory to the extent that they are authorized by the constitutions of the Freely Associated States so to do.

Q. Would approval of the Compact deny any U.S. citizen the benefit of a judgment?

A. No, since the courts of the Marshall Islands and the Federated States of Micronesia now possess the constitutional authority which they will exercise after the effective date of the Compact.

Section 177

Q. If the U.S. accepts the responsibility for compensation, why has the Administration consistently resisted any efforts to fund the provisions of P.L. 95-134 and P.L. 96-205?

A. The record of this and prior Administrations with respect to provision of funds under the terms of P.L. 95-134 does not constitute one of "resistance" to funding. The acceptance by the United States of responsibility for compensation is set forth in Compact Section 177 and the limits of that responsibility are set forth in the Compact Section 177 agreement. The acceptance of responsibility set forth in Compact Section 177 does not relate directly to earlier enacted laws, including the two mentioned in the question, except to the extent that their purposes are incorporated in the Compact Section 177 agreement.

Q. Has the Administration ever included any request for funding for these programs in any formal budget request?

A. There have been numerous Administration requests for appropriation of the payments forseen under P.L. 95-134. Further, with respect to P.L. 96-205, and specifically its amendments to P.L. 95-134 as respects health care for certain categories of persons in the Marshall Islands, the Administration is preparing for transmittal to Congress a health care plan and a plan for expenditure of $4 million appropriated in support of this legislation. Finally, upon Congresisonal enactment of the

Compact, the Administration will request the appropriation of the $150 million fund described in the Compact Section 177 agreement.

Q. By incorporation of the 177 subsidiary into the Compact, what is its legal status?

Q. Could it be modified without Congressional approval?

A. Upon enactment and entry into force, the agreement subsidiary to Compact Section 177 will have the same status in law as the Compact. Assuming concurrence of the Government of the Marshall Islands, modification of the Section 177 agreement would require Congressional concurrence as well.

Under Article II of the 177 subsidiary, it appears that the Government of the Marshall Islands must use $2 million per year to obtain technical assistance from U.S. agencies to include specific health care programs and services related to the consequences of the testing program and contemplated in P.L. 95-134 and P.L. 96-205 within its own health program.

Q. Is it clear that absent a determination by the Secretary of the Interior, only Bikini, Enewetak, Rongelap, and Utrik are covered by P.L. 95-134 and P.L. 96-205?

A. The language of Section 106(a) of P.L. 96-205 states that the Secrtetary of the Interior shall provide a program of medical care and treatment for "the people of the atolls of Bikini, Enewetak, Rongelap and Utrik and for the people of such other atolls as may be found to be or to have been exposed to radiation from the nuclear weapons testing program..." In his capacity as provider of the programs contemplated in the law, the Secretary of the Interior clearly has the authority to extend program coverage beyond the people of the four atolls named in the legislation.

Q. Is it the intent of the subsidiary to meet the needs of those four atolls?

A. Yes.

Q. Is there any concern that the $2 million per year would not be fully adequate to cover the intent of P.L. 95-134 and P.L. 96-205?

A. No, especially in light of the other resources which the Government of the Marshall Islands intends or is required to devote to its overall health care system.

Q. There has been some discussion of a $12 million trust fund to provide comprehensive health care for the four atolls. Is there anything in the subsidiary which would prevent the four

atolls and the Marshall Islands Government from creating such a trust?

A. No, to the extent that the uses to which funds from such fund were used in accordance with the Compact Section 177 agreement.

Q. Is there any way the $30 million could be used other than for the benefit of the four atolls (except for incidental health treatment for a non-affected person who happened to be present and in need of medical care)?

A. Yes. The United States assistance provided to the Government of the Marshall Islands under the Compact Section 177 agreement is required to be used:

1.) to support the programmatic efforts contemplated in P.L. 95-134 and P.L. 96-205; and

2.) to support programs related to the consequences of the nuclear testing program.

Under both of these stipulations, the peoples of the atolls of Bikini, Enewetak, Rongelap and Utrik would clearly be beneficiaries. However, either of these stipulations contemplates that others may be found to be or to have been affected by the nuclear weapons testing program. Thus, the Compact Section 177 agreement continues the existing degree of responsiveness to presently unknown effects that is set forth in P.L. 95-134 as amended by P.L. 96-205.

Q. Have the Public Health Service, Department of Energy, and other agencies agreed to provide the full coverage contemplated under P.L. 95-134 and P.L. 96-205 for not more than $2 million per year?

A. The Administration is prepared to devote the services of the agencies named in the question and such other agencies as necessary to fulfill United States obligations under the Compact Section 177 agreement.

Q. Is it clear that Section 1(b) means that the 1(a) funds are limited to the four atolls and are in addition to any other expenditures which the Marshall Islands Government may make for these or other atolls?

A. The purpose of Section 1(b) of Article II of the Compact Section 177 agreement is to assure that the provision of funds and assistance pursuant to Section 1(a) of Article II in no way limits or modifies the requirements attached to the expenditure by the Government of the Marshall Islands of the funds provided by the sections of the Compact referred to in Section 1(b) of

Article II. Section 1(b) of Article II also provides that these other health care funds may be devoted by the Government of the Marshall Islands to programs directed to the health consequences of the nuclear testing program.

Q. Is it clear that the use of any 1(a) funds under 1(c) for matching or other programs must be for the four atolls exclusively?

A. The ability of the Government of the Marshall Islands to employ Article II, Section 1(a) assistance for matching purposes does not derogate from the specific use requirements attached to those funds in Section 1(a) of Article II.

Q. Can the U.S. provide technical assistance other than on a reimbursable basis?

Q. Why should we not provide that such assistance may be provided on either a reimbursable or non reimbursable basis to provide flexibility?

A. The United States Government can provide technical assistance to the Freely Associated States pursuant to Compact Section 226 on a reimbursable or non-reimbursable basis.

Q. If Congress were to appropriate funds for technical assistance without requiring reimbursement, would you refuse to expend the sums?

A. No, assuming the funds were made available on the basis of an approved appropriations law.

Q. When do you plan to conclude a Minute for Rongelap and Utrik?

Q. Why has not one been concluded?

Q. Can we assume they will resemble the provisions for Enewetak and Bikini?

Q. What happens to the quarterly payments to Rongelap and Uterik until a Minute is agreed upon?

A. The Agreed Minutes specifying the trust funds arrangements for the peoples of Rongelap and Utrik are now being prepared and, upon completion, will be appended to the Compact Section 177 agreement. These Agreed Minutes are expected to resemble in form in substance the Agreed Minutes for Bikini and Enewetak and will, as is required, be consistent with the Compact Section 177 agreement, particularly Section 8 of Article II of that agreement. Preparation and incorporation of these Agreed Minutes is a condition precedent to the disbursement of funds from the Compact Section 177 agreement to the recipients in question.

Q. Under Article III, Section 2 can the Tribunal create a new authority which will replace or detract from the authorities created in Section 1?

A. No.

Q. How would a conflict between customary law and the Constitution of the Marshall Islands under III, 3, (a) be resolved?
Q. Which has greater weight?

A. The Constitution of the Marshall Islands contains provisions for the rationalization of customary law and traditional practice in the Marshall Islands with the Constitution and laws of the Marshall Islands.

Q. Could the Marshall Island amend its Constitution to change the nature of disbursements?

A. Yes, but if the Marshall Islands attempted to implement such a change without the agreement of the Government of the United States, it would be in breach of the Compact Section 177 agreement.

Q. Does IV, 1, (c) confer authority or does it describe a requirement for the conferral of authority with which the Marshall Islands Government must comply?

A. The latter.

Q. Would a resident of the Marshall Islands who becomes a citizen of the United States or some other country lose his rights to compensation pursuant to IV, 1, (a)?

A. Were the acquisition of another citizenship to strip the person in question of his Marshallese citizenship, the person in question would be required to demonstrate to the Claims Tribunal that he possessed Marshallese citizenship or the attributes which would have resulted in his having Marshallese citizenship at the time of the arising of his claim in order to establish standing.

Q. How does V, 1 relate to the $21.4 million which Congress has already provided to Bikini resettlement?

A. It has no relation to that funding.

Q. Does the Administration plan to assist in any cleanup of Bikini?

Q. Would the Administration oppose any assistance to help clean Bikini?

A. The Administration believes that the assistance provided through Compact Section 177 and its separate agreement constitute and full and fair settlement of claims against the United States which have arisen or may arise from the nuclear weapons testing program. In that sense, the Administration believes that the $75 million which will be provided to the people of Bikini pursuant to the Compact Section 177 agreement, especially when considered together with other United States payments to the people of Bikini, constitutes major assistance for the rehabilitation of the Bikini Atoll, assuming that is the use to which the people of Bikini choose to dedicate the funding. The people of Bikini choose to dedicate the funding to other programs or activities which they believe have a higher priority or are more important than the rehabilitation of Bikini Atoll.

Q. If the Government of the Marshall Islands were to request assistance beyond that provided in the subsidiary in discharging its responsibilities under Article VII, would the Administration support such a request?

Q. Would the Administration oppose such a request on a nonreimbursable basis?

A. The Administration would respond to such requests on a case-by-case basis.

Q. Does Article IX prohibit the Government of the Marshall Islands from requesting or the Congress from agreeing to provide additional assistance?

A. No, Article IX provides a vehicle for such requests from the Government of the Marshall Islands and for a response to those requests by the United States. Article IX, however, does not require the Congress to authorize or appropriate additional assistance.

Q. Can Articles X and XI be implemented prior to the effective date of the Compact and how do they relate to the provision of the $150 million?

A. The Administration does not forsee a situation in which portions of any of the Compact separate agreements would come into effect prior to the effective date of the Compact. There is a direct relationship among all of the sections and articles of the Compact Section 177 agreement.

TITLE II

Provide a list of total federal funding for the Trust Territory since 1970 for operations and infrastructure (including any assistance from programs other than those administered by TIA).

(See attached Appendix B).

Q. How do those levels compare to funding levels to the Federated States of Micronesia and Marshall under the Compact?

A. Although organized differently, aggregate United States economic assistance to the Freely Associated States under the Compact will sustain, during the first five years after the Compact's effective date, the levels of trusteeship assistance which have been provided to the Marshall Islands and the Federated States of Micronesia in recent years. Thereafter, Compact economic assistance will decrease in light of the expected increase in other revenues available to the Freely Associated States.

Q. When does the Administration plan to initiate funding?

A. The Administration intends to initiate the provision of Compact economic assistance to the Freely Associated States upon the effective date of the Compact.

Q. Does the Administration consider funding to be implementation as provided in Section 1 of the Resolution?

A. Yes, to the extent Congress has appropriated funds sufficient to discharge United States obligations for the first year after the Compact's effective date.

Section 211

The section provides that over the 15 years an average of not less than 40% of the funding will be dedicated to the capital account.

Q. Who will monitor the average?

A. In the first instance, the Governments of the Freely Associated States will monitor the average and will report each year's allocation in their annual reports to the United States required in Section 211(c).

Q. Will Congress be asked to allocate sums between operations and capital account in the annual appropriation?

A. No.

Q. Will Congress have the ability to do such an allocation?

A. The allocation for the fifteen year Compact funding period will be set forth in the national development plans which will have been concurred in by the Government of the United States and will be available to the Congress, along with the annual reports from the Freely Associated States. Thus, when Congress appropriates annual Compact economic assistance, it will do so on the basis of information supplied by the Administration with respect to the intended allocation between the current account and the capital account for the year in question.

Q. Assuming such an allocation is made, could funds be reprogrammed from one account to the other without going through the usual reprogramming procedure?

A. The assumption underlying this question is premised on an action by the United States not contemplated in the Compact. It would be inappropriate for the Administration to address how such an action would be implemented.

Q. Do you plan to request appropriations for the capital account prior to the development of an economic development plan?

A. The overall amount which the Administration will request for appropriation pursuant to Compact Section 211 is well known and included in the aggregate amount for the Compact identified in the President's FY 1985 budget request. As stated above, the Administration believes that the Compact will not come into effect, and thus funding will not be initiated, until the national development plans have been promulgated and the United States has concurred in them.

Q. Who concurs in the plan?

Q. What agencies will be involved in the concurrence in the plan?

A. When the national development plans are submitted, a group of United States Government officials, including experts in development planning for less developed countries and individuals knowledgeable in Trust Territory matters, will review the plans, consult with the Freely Associated State governments and report their findings to the Micronesia Interagency Group, which will be the concurring authority. The Administration intends to involve Congress, especially the members and staff of the committees with jurisdiction over the Trust Territory and the Compact, in the review process.

Q. What procedures do you plan to implement to ensure that expenditures under the capital account are spent only in accordance with the plan?

A. The freely associated are specifically required to report annually to the United States Government with respect to their use of each years Compact assistance, including the capital account. The Government of the United States will have available to it the national development plans and the information they provide with respect to the disposition of the capital account. Finally, the United States audit which will take place pursuant to Compact Section 233 will cover, inter alia, the expenditure of capital account funds by the Freely Associated States.

Q. Is there any reason to actually disburse funds for the capital account in advance of the need to expend rather than merely providing budget authority?

Q. Is there any reason capital account funds should not be provided in the same manner such funds are presently provided?

A. The Administration contemplates that capital account funding, like current account funding, under the Compact will be provided on a grant basis, essentially on a quarterly basis. During the trusteeship period, especially in a setting where United States officials were responsible for the expenditure of funds, it has proven appropriate to employ a budget authority mechanism for the Trust Territory construction account. Under the Compact, the governments of the Freely Associated States will be responsible for the expenditure of the assistance provided by the United States and the only difference between capital account and current account is that the Freely Associated States have agreed in the Compact that funding in the two accounts will be directed to different activities.

Q. What agency will administer these funds?

A. The Administration intends to create an interagency office within the executive branch which will be vested with overall responsibility for management of the free association relationship. This office will administer the transaction of providing Congressionally appropriated current account and capital account funding to the Freely Associated States.

Q. Do you plan on involving the Congress in this decision on other than a pro forma basis?

A. The extensive consultations on this subject which have taken place between Administration representatives and the members and staff of the Senate Energy and Natural Resources Committee as well as the Senate Appropriations Interior and Related Agencies Subcommittee demonstrate the Administration's intentions in this regard.

Q. As contemplated what provision is there for Congressional oversight?

A. The Administration expects that the Committees of the Senate and House which have jurisdiction over the Compact of Free Association will exercise full oversight jurisdiction over management of the free association relationship and over the executive branch office charged with that responsibility.

Q. Will this be any different than for Puerto Rico at present?

A. Yes.

Section 211(b) provides that the U.S. must concur in the economic development plan.

Q. How will that be done?

Q. Will congress be involved or consulted?

A. As stated above, when the national development plans are submitted, a group of United States Government officials, including experts in development planning for less developed countries and individuals knowledgeable in Trust Territory matters, will review the plans, consult with the Freely Associated State governments and report their findings to the Micronesia Interagency Group, which will be the concurring authority. The Administration intends to involve Congress, especially the members and staff of the committees with jurisdiction over the Trust Territory and the Compact, in the review process.

Q. Must anyone concur in an amendment?

Q. If so, on what basis?

Q. If not, what would prevent a FAS, once the plan is concurred in, from amending it to include non-capital items or even devote the entire amount to operations?

Q. What recourse would the U.S. have?

A. As stated above, the requirement for direct United States concurrence in the national development plans does not explicitly extend to subsequent amendments to those plans. This is because any such amendments promulgated by the Governments of the Marshall Islands and the Federated States of Micronesia are required to be consistent with the requirements and provisions of the Compact, including specifically the definitional provisions of Compact Section 461 relating to the capital account, the current account and the national development plan itself. Thus, a Freely Associated State would not be able to amend its national development plan in the manner conjectured in the question because such an amendment would render the plan into a document inconsistent with the requirements of the Compact. The freely associated state governments are required to report any such amendments to the Government of the United States in the annual reports they will make pursuant to Compact Section 211.

Section 212

Q. Has DOD committed to the provision of four Civic Action Teams at $250,000 each for the fifteen year period?

A. The executive branch is prepared to make four Civic Action Teams available to the Federated States of Micronesia in accordance with Compact Section 212 and the relevant terms of the separate agreement referred to in Compact Section 227.

Q. What assurance do we have that DOD will not increase the cost in future years?

A. The terms and conditions attendant to provision of the Civic Action Teams, including cost sharing arrangements, will be mutually agreed with the Government of the Federated States of Micronesia in the separate agreement referred to in Compact section 227.

Q. Rather than this backdoor approach, why did you not simply agree to provide the four teams at no cost so that DOD assumed the cost?

A. The Administration and the Federated States of Micronesia both believe that the method for provision of Civic Action Teams employed in the Compact is the most proper approach to take on this matter. It provides the Federated States of Micronesia with the flexibility of determining the most appropriate use for the unique resource which the Civic Action Teams represent, and takes into account changing circumstances and needs as the special development work to which the teams will be dedicated progresses.

Section 213

Q. What is the present condition on Ebeye?

A. Conditions on Ebeye Island have improved substantially in recent years, as has been explained in testimony by the Trust Territory High Commissioner and the Government of the Marshall Islands during hearings before the Senate Committee on Energy and Natural Resources.

Q. How is the Kwajalein Atoll Development Authority constituted?

A. The Kwajalein Atoll Development Authority is constituted under the authority of the Cabinet of the Government of the Marshall Islands pursuant to Trust Territory Code. Its membership includes a representative of the Kwajalein Iroij, two representatives of the Kwajalein Alabs, the Mayor of Kwajalein Atoll, the Nitijela members from Kwajalein, and the Chief Secretary and the Ebeye Public Works Officer of the Marshall Islands Government.

Q. What are its plans for development?

A. The Kwajalein Atoll Development Authority is now completing work on a comprehensive development plan for the atoll.

Q. What assistance has been provided?

A. Under the Interim Use Agreement now in force, the Government of the United States provides, in addition to the funds normally provided for use rights, up to an additional $6 million, partially on a matching basis, for Kwajalein Atoll development projects. Further, technical assistance in development planning is provided by the United States Government and its contractors on a continuing basis.

Q. What is being done to improve relations between KMR and the Marshallese?

A. The primary vehicle for maintenance of the generally excellent relations between the Marshallese civilian community resident in the Kwajalein Atoll and the Kwajalein Missile Range Command is the Community Relations Council. Since its inception, it has at its regular meetings identified and implemented several programs and activities designed to maintain and improve civil-military relations.

Your response to previous questions indicate that Wake is under the administration of the U.S. Air Force.

Q. Has there been a change in Executive Order 11048 of September 4, 1962 or is administration still vested in Interior and exercised by the Air Force pursuant to an agreement between the agencies of June 24, 1972?

A. There has been no change to these arrangements and administration over Wake Island is exercised by the Department of the Air Force.

Section 214

Q. Must the grants under this section be spent on energy production?

Q. Are these capital funds or could they be spent for fuel?

A. Compact Section 214 identifies these funds as constituting a United States contribution to the efforts of the Freely Associated States to increase their self-sufficiency in energy production. The funding is identified as current account funding and thus could be dedicated to the cost of maintaining energy production. Alternatively, the Freely Associated State governments could dedicate the funds, or some portion of them, to energy related capital account purposes.

Q. Do you anticipate receiving justification for the use of these funds?

A. Yes, in the form of the national development plans.

Q. Do you plan to share such justification with the Congress?

Yes.

Q. Absent a requirement for either justification or that the funds be spent for other than operations, why weren't the funds just included in the current account?

A. As state above, these funds are to be provided in the current account. They carry a specific identification for energy production due to the nature of the agreements presented during the negotiations and in light of the desire of the Freely Associated State governments to commit themselves to the goals of Section 214.

Q. How were these numbers arrived at?

A. Like all economic assistance elements of the Compact, they were negotiated and mutually agreed.

Section 215

Q. What are these funds to be used for?

A. The current account grants provided under Compact Section 215(a) will be used by the Freely Associated State governments for the operation and maintenance of their communications systems, particularly the world-points elements of those systems.

Q. Since the funds under subsection (b) could be used for any purpose, why did you not include the funds in the current account under Section 211 and merely note that the current account covered these purposes?

A. Funding under Compact Section 215(b) is intended to provide the Freely Associated States with the capital resources necessary to purchase and own the satellite-based communications hardware which has been installed in their jurisdictions. The provision of this funding in the Compact redeems the United States obligation, as accepted by Congress, to provide a world-points communications system to the Trust Territory at no cost to the citizens or governments in the Trust Territory. Should either or both of the Freely Associated States determine not to purchase the systems, but continue to lease them from the Communications Satellite Corporation, the funding made available for that purpose by Section 215(b) would remain available to them for any other authorized current or capital account purpose. The United States obligation, however, would have been met.

Q. What is the present status of the communications system in the Marshall Islands and the Federated States of Micronesia?

A. There are four world-points satellite earth stations in the Federated States of Micronesia, one in each state. There are two in the Marshall Islands, one serving Majuro and the other serving Ebeye.

Section 216

Q. How will the funds under (a) and (b) be allocated between the Federated States of Micronesia and Marshalls?

A. The Presidents of the Marshall Islands and the Federated States of Micronesia, together with the President of Palau, met on December 13, 1983 to determine and mutually agree to an allocation of the funds to be provided pursuant to Compact Section 216. Agreement was reached and the Government of the United States was informed of the allocation formula in accordance with Compact Section 216(c). The agreed formula will remain in force until altered by subsequent mutual agreement of the Freely Associated States.

Q. Will Congress be informed of the allocation?

A. The allocation formula referred to in the previous answer is attached.

Q. Is there any need for appropriation prior to such an agreement for allocation?

A. Agreement on allocation has been reached, as stated above.

Q. Must the funds be spent for the purposes specified in this Section?

Q. How will that be enforced?

Q. What recourse will the U.S. have if the funds are not so spent?

A. The Freely Associated State governments have agreed in the Compact to the spending requirements attending their receipt of the funds. If the Freely Associated States are not able to demonstrate that funds in the amounts specified in Section 216 are not spent for those purposes, the United States Government could have recourse to the dispute resolution procedure set forth in Article II of Title Four of the Compact.

Q. Who will develop the curricular criteria referred to in subsection (a)(3)?

Q. Will the U.S. be involved and if so who?

A. The Governments of the Freely Associated States will develop the curricular criteria referred to in Compact Section 216(a)(3) and have undertaken an obligation to base this curricula on the goals and programs of the national development plans. We contemplate that the manpower development aspects of those plans will be specifically relevant to the question of curricula specification. This is an important aspect of the Compact's overall approach to development of the human resources of the Freely Associated States and, during the negotiations on this Section, grew out of a mutual frustration with the post-secondary assistance programs which have been available to the Marshall Islands and the Federated States of Micronesia during the trusteeship period.

Q. What type of surveillance and enforcement does (a)(1) and (b) contemplate?

A. Both of the Freely Associated State governments contemplate maritime zone surveillance programs employing light aircraft and small ships.

Q. Are these funds subject to appropriation?

A. The Administration contemplates that all of the economic assistance funds set forth in the Compact will be Congressionally appropriated funds. The full faith and credit provisions of Compact Section 236 apply to all funds specified in Article I of Title Two, including therefore the funds specified in Compact Section 216.

Q. Is the requirement of subsection (c) conditioned upon the effective date? Concurrence in the economic development plan?

A. The requirement set forth in Section 216(c) for an allocation has been met, as stated above.

Section 219

Q. Who makes the determination for the U.S. Government?

Q. To what extent is that determination circumscribed by appropriation acts?

Q. What is the role of Congress?

Q. Do you plan to consult with the Appropriation Committees?

Q. Which ones?

A. The determinations made pursuant to Section 219 will be made by the executive branch in accordance with appropriations acts, as is required by that Section. In making its determinations, the Administration intends to consult with the Appropriations of the Senate and the House of Representatives.

Q. Who will administer these funds?

A. Like other Compact assistance, these funds will be managed by the office in the executive branch charged with the overall responsibility for the free association relationship.

Q. On page 42 line 10 of the Joint Resolution should "for" be "by"?

A. Yes, this is an error in the Committee print.

Q. Does the determination language mean that the Administration intends to reinterpret the language of the Appropriation Acts?

A. No.

The section analysis which was transmitted indicates that "any unexpended balance of such funds shall be returned to the United States."

Q. When?

Q. Who determines the balance?

Q. Where is the source of this language?

Q. Does this interpretation mean that current procedures which prevent drawdown of appropriated funds in advance of need will be altered?

Q. If so have you cleared this with the Appropriation Committees?

Q. If not, then what does that sentence mean?

A. Under Section 219, funds which have been appropriated to the Trust Territory but not obligated by it as of the effective date of the Compact will remain available and accure to the Freely Associated State governments for the purposes such funds were initially appropriated by the United States Congress. A situation with unexpended balances could occur were the Compact to enter into force on a day other than the first day of a fiscal year. In that circumstance, Congress may have appropriated Trust Territory operations funding, for example, for an entire fiscal year. Were the Compact to enter into force prior to the expiration of that fiscal year, the Administration believes that the Freely Associated States would receive, for the remainder of the fiscal year, a pro-rata share of first year Compact assistance in lieu of the remaining operations grant for that year.

Section 221

Article II is not covered by the full faith and credit guarantee of Section 236.

Q. Does this mean that the provision of services under subsection (a), the grant under subsection (b), and the programs under subsection (c) are dependent upon:

authorizations for the continued existence of these services and programs?

appropriations, including any limitations contained in appropriations acts?

A. Congressional enactment of the Compact will provide the necessary authorization for provision of the programs and services referred to in Compact Section 221. Funding to support the provision of these services and programs will need to be appropriated by Congress on an annual basis.

Q. Why is subsection (a) phrased as nondiscretionary when the programs could be eliminated or modified?

A. Because the United States intends to provide the services and programs unless an elimination or modification pursuant to the terms of the Compact or its related agreements occurs.

Subsections (b) and (c) imply that the alternate energy development projects will be available only as provided in the laws of the U.S.

Q. Does that include both authorization and appropriation?

A. Alternate energy development projects, studies and conservation measures are addressed only in Compact Section 221(c). The laws of the United States referred to in that section include both authorization and appropriations acts, including the limiting effect which the latter have on the former.

Q. Why does not that same caveat apply to the services in subsection (a)?

A. It does, in the sense that Compact Section 221(a) will be part of a law of the United States, i.e. the Compact.

Q. What happens if the Administration should propose privatization of the Weather Service, for example, and the Congress were to agree?

A. The Administration is confident that this hypothetical situation would be amenable to resolution on a mutually agreed basis with the Freely Associated States.

Q. Given the track record of commitments in the Trust Territory for which the Administration has never submitted budget requests and which the Congress has had to fund, what assurance do either the Committee or the Micronesians have that we will see requests for these programs?

A. This history of United States administration of the Trust Territory, including matters relating to differing interpretations of committments of the United States, as Administering Authority, to the peoples of the Trust Territory does not provide an appropriate model on which to base predictions of United States actions in implementation of the Compact. During the trusteeship period, there has never been developed an overall, freely negotiated, mutually agreed and directly approved framework for American-Micronesian or American-Marshallese governmental relations. Rather, annual budget priorities have substituted for economic planning and broadly stated goals and responsibilities have substituted for specific objectives, commitments and mutual goals. The Administration believes that the United States will fulfill its commitments under the Compact precisely because it is in the direct interest of the United States so to do.

Q. Does subsection (c) include the projects authorized by P.L. 98-213 and included in DOE's Territorial Energy Assessment Report?

A. It does include projects authorized by P.L. 98-213 as they may be subsequently delimited in appropriations acts. Inclusion of a project in the Territorial Energy Assessment report does not, without more, provide Congressional authorization.

Q. Does subsection (c) include the authorization for the Ponape hydroelectric project?

A. To the extent the project is authorized by the laws of the United States and to the limit determined in appropriations acts.

Q. Why not spell out either the particular programs or the authorizations for the sake of clarity?

A. We believe the approach used in Section 221(c) is more appropriate since, at the time the Compact was negotiated with and approved by the Freely Associated States, the extent of alternate energy development projects, studies and conservation measures applicable to the Trust Territory on the day preceding the effective date of the Compact could not be known.

Q. Are amendments to the basic authorizations for these services and programs necessary to permit the agencies to provide them extra territorially or are the FAS considered domestic for these purposes?

A. The Compact, when enacted and executed, will provide the necessary authorization for the provision of the services and programs referred to in Section 221.

Section 222

Q. Are (a) and (b) exclusive?

A. Section 222(a) and 222(b) are exclusive in the sense that the consultations referred to in the introductory portion of Section 222 could occur with respect to the subject matter referred to in either subsection. The Administration believes however that there is an important relationship between the opportunities for economic advancement in the Freely Associated States and the progressive diminution of federal programs and services. We expect that this relationship will provide a policy framework for the consultations forseen in Section 222.

Q. Why should there not be frequent consultations on both?

A. We agree with the implication of the question and believe that Congressional intent will be implemented in this section.

Q. Do you interpret the last part of this section to permit the Executive Branch to effect a modification by mutual agreement not-withstanding the language of either authorization or appropriation acts?

Q. Do you plan to consult with Congress?

Q. Do you interpret this language as permitting the Executive Branch to avoid reporting, audit, disbursement, or other requirements imposed upon it by Congress simply by "mutually agreeing" with the recipient government?

Q. Do you interpret this language to permit the Executive Branch, by "mutual agreement" to permit services, grants, or programs to be used for purposes other than as stated in Section 221 and as defined in authorization or appropriation acts?

Q. If a change or modification is required or justified, why should it not be done in the normal legislative manner?

A. The executive branch of the United States Government, in reaching agreement with the Freely Associated State governments on the modification of any of the services or programs provided under Article II of Title Two, could implement such agreement only to the extent the terms of the agreement were consistent with the terms of the Compact and the laws of the United States. Were the Freely Associated States or the executive branch to determine and agree that a program or service, as authorized or appropriated by Congress, were in need of modification, Congressional authority to effect the modification would be sought to the extent necessary. The Administration does not contemplate that internal United States Government reporting or other similar matters will be the topic of any mutual agreement with the Freely Associated States. As in all matters, the Administration forsees regular consultation with Congress as respects the implementation of Compact Section 222.

Section 223

Q. On page 44, line 22, should there be an "a" before "maximum"?

A. Yes, this is an error in the Committee print.

Q. Why should post-secondary assistance be terminated?

A. The family of programs of the United States Government which post-secondary educational assistance were designed for the benefit of United States citizens and their extension to citizens of the Trust Territory, whether wise or unwise, has been rationalized on the theory that, during the pendency of the Trusteeship Agreement, the United States has treated the Trust Territory as though it were part of the United States. The nature of the post-Trusteeship political status which the peoples of the Marshall Islands and the Federated States of Micronesia have chosen renders these programs inappropriate. Equally importantly, the experience of Trust Territory citizens with the post-secondary education assistance programs has not been wholly positive. The approach taken to post-secondary education assistance in Compact Section 216 will prevent the negative aspects which have characterized the trusteeship period programs and provide additional support to realization of our joint objective of economic advancement in the Freely Associated States.

Section 224

Q. Does this section refer only to laws currently in force or does it contemplate special legislation?

A. Section 224 contemplates primarily the enactment of new legislation.

Q. Does the Administration interpret the enactment of legislation to constitute agreement of the "Government of the United States" or do you interpret this to provide an Executive Branch veto notwithstanding a request from the FAS and enactment of legislation?

A. The enactment of legislation is a necessary component of the United States ability to reach mutual agreement on the extension of additional United States grant assistance, services and programs. The ability of the President to disapprove legislation to which he does not agree is not mitigated by this Section.

Q. Are funds provided under this or any other section subject to the requirements of the anti-impoundment provisions of the Budget Act?

A. Yes, insofar as the Government of the United States is concerned. The Freely Associated States may, at any time, reject such programs and services.

Q. Does the mutual agreement language of this section include the possibility of rental payments?

Q. Would the assumption of such costs be subject to authorization or appropriation?

A. It is possible that the hypothetical matter posited in the question could arise in discussions with the Freely Associated States but it would be inappropriate to predict the United States position. The Administration contemplates that any additional grant assistance, service or program pursuant to Compact Section 224 would be provided by the United States Government in a manner consistent with United States law, including authorization and appropriation acts.

Q. Do you plan to consult with the Congress prior to any agreement under this section?

A. As in other matters, the Administration forsees full consultation with Congress on any implementation of Compact Section 224.

Section 226

The section analysis indicates that any agency authorized to provide technical assistance may do so even if such assistance is limited to domestic areas.

Q. Does this mean that the FAS would be considered to be domestic for the purpose of such assistance just as the Trust Territory is now considered foreign for the purpose of the Peace Corps?

A. Pursuant to Compact Section 226, all agencies and institutions of the United States Government will be authorized to provide technical assistance to the Freely Associated States. There is thus no need to characterize the Freely Associated States as foreign or domestic for purposes of technical assistance.

Q. Does "priority consideration" mean priority delivery of such assistance?

A. The term "priority consideration" as used in Compact Section 226 refers to the manner in which the technical assistance is provided as compared to other recipients. Specifically, Section 226 requires that the technical assistance be provided "in a manner which gives priority consideration to the Marshall Islands and the Federated States of Micronesia over other recipients not a part of the United States or its territories or possessions."

Q. Must such assistance be on a reimbursable basis?

A. No.

Q. Does the present authorization of Interior to provide technical assistance survive?

Q. If not, why not?

A. The Department of the Interior, like the other departments and agencies of the United States Government, will be authorized by Compact Section 226 to provide technical assistance to the Freely Associated States.

Q. Which agency will do the coordination?

A. The executive branch office charged with the overall management of the free association relationship.

Q. What is the legal requirement for other agencies to coordinate?

A. The anticipated mandate of the executive branch office charged with overall management of the free association relationship, supported in this instance by the language of Compact Section 226.

Q. Do you interpret this coordination language to permit any deviation from the requirements of authorization or appropriation acts?

A. No, the provision for coordination refers to an executive branch function.

Q. Do you plan to consult with Congress?

A. As in other matters, the Administration forsees full consultation with Congress on any implementation of Compact Section 226.

Section 231

Q. During years 16 and 17, why did you select an annual average over the first fifteen years rather than just continue the funding level over year 15?

A. The general objective of providing economic assistance during the potential sixteenth and seventeenth years, which would be the third and fourth years of the negotiating period, was to continue, during the negotiations, authority for provision of one of the subjects of negotiation, that is, United States economic assistance. During the negotiations leading to the Compact, the United States concluded it would be appropriate to authorize the average of prior years grant assistance in that the increase such an arrangement would bring about would compensate for the fact that the program assistance under Article II of Title Two would not continue during the period in question.

Q. Does this section foreclose status negotiations prior to year 13?

A. No.

Q. What happens if no agreement is reached by the end of year 17?

A. In that circumstance, the free association relationship between the United States and the other party to the negotiation would continue until otherwise terminated, but certain provisions of the Compact would expire.

Q. Does the general authority for exceptional circumstances continue?

A. If the question is referring to the "extraordinary, economically adverse circumstances" referred to in Compact Section 211(c), this reference does not constitute an authorization for the appropriation of funds. Compact Section 211(c) would, nevertheless, expire at the completion of the subsequent negotiations or the end of the seventeenth year, whichever is earlier, unless extended by mutual agreement pursuant to Compact Section 231.

Q. Could Congress provide funds notwithstanding the failure of the Executive Branch to reach an agreement?

A. It would be inappropriate to conjecture on whether Congress would engage in such an act. From the Administration's standpoint, it is likely that the President would approve such legislation to the extent that the foreign policy and national security objectives of the United States would be served.

Q. Do you plan to consult with Congress?

A. As in other matters, the Administration forsees full consultation with Congress on any implementation of Compact Section 231.

Q. Is it clear that the Congress must approve any agreement reached during such negotiations?

A. Yes, unless by prior enactment, Congress has provided sufficient implementation authority to the executive branch.

Q. Do you interpret this section either alone or in conjunction with the various "mutual agreement" provisions as enabling the Administration to agree to extend any provisions beyond either year 15 or 17 without specific approval by Congress?

A. No, although certain provisions of the Compact and its subsidiary agreements will by their own terms survive longer than fifteen years.

Q. If so, does this also include the pledge of Full Faith and Credit?

A. No.

Q. Given the length of these negotiations, are you satisfied that the four year period is adequate?

A. Yes, particularly in light of the fact that the primary focus of the negotiations contemplated under Compact Section 231 will be the continuation of an arrangement which will have already been in force for more than a decade as distinguished from the present negotiations which have been primarily a creative process.

Q. Does the section 236 guarantee apply in years 16 and 17?

A. Yes.

Section 233

Q. Do you plan to involve the congress in the determination of how the audits will be performed?

A. The Administration has already had numerous consultations with Congress on this matter and has developed the framework for audit procedures on the basis of procedures of the General Accounting Office and with participation by officials of the GAO.

Q. Is the audit limited to a single annual audit or may they be performed as appropriate?

A. The Administration contemplates annual financial compliance audits for each of the fifteen years of the initial funding period of the Compact, and economy and efficiency and program results audits as appropriate over the same period.

Your response to previous questions indicates that the office managing the relationship will perform the audits.

Q. Who will audit that office?

A. Aside from executive branch arrangements for the effective audit of that office, the General Accounting Office could, upon Congressional request, perform such an audit.

Q. Does this mean that other agencies providing programs or services will not be subject to audit or that their Inspector General will not have audit authority?

A. No.

Section 235

Q. What trusts are involved?

Q. How much is in the trust?

Q. Who manages the trust?

A. The Ujelang Trust Fund No. 2, which according to the most recent available date statistics valued at $1,070,599, the Anguar Mining Trust Fund, which according to the most recent available statistics was valued at $854,785 and the first Kili/Bikini Trust Fund, whose value exceeds $6,000,000. The High Commissioner is trustee for the first two of these funds and plays a customary role in the selection of trustee with respect to the third.

Q. Who do you intend to appoint as trustee?

A. The Administration has not yet made that determination.

Q. Do you find any authority in this Compact to modify or alter the requirements for such trusts as may presently exist in authorization or appropriation acts?

Q. If so what is that authority and how extensive is it?

A. No.

The President's budget submission for FY'85 included funding for the Compact under Foreign Economic Assistance.

Q. Provide a list of all other multi-year foreign assistance programs backed by full faith and credit?

A. There are none.

Q. Aside from the similar situation of the Northern Marianas, are there any other examples of multi-year economic assistance backed by full faith and credit?

A. No.

Section 241-243

Compare the treatment of the FAS with each of the territories, including Puerto Rico, by territory under these sections.

A. Under Article IV of Title Two, the Freely Associated States are designated as without the customs territory of the United States and are considered insular possessions of the United States for purposes of General Headnote 3(a) of the Tariff Schedules of the United States. The Freely Associated States will thus attain the same benefits as apply to the insular possessions of the United States which are not within the customs territory of the United States with respect to the exportation of products to the United States, except for the fact that the provisions of Article IV of Title Two of the Compact will expire upon the fifteenth anniversary of the effective date of the Compact unless they are extended by mutual agreement pursuant to Compact Section 231. Puerto Rico is included within the customs territory of the United States.

Q. Does the U.S. have the ability to modify General Headnote 3(a)?

A. Yes.

Q. Can the U.S. enact legislation which treats different territories differently and if so would such treatment automatically apply to the FAS?

Q. Can the U.S. enact preferential legislation on imports from the FAS over the same imports from a territory?

Q. Can the U.S. enact preferential legislation on imports from a territory over the same imports from a FAS?

A. Were Congress to enact non-discriminatory legislation requiring general changes in Headnote 3(a), such changes would apply to the Freely Associated States as well. Were Congress to enact legislation which discriminated in favor of or against one or another insular possession, and such legislation became law, it would apply by its very terms only to the object of the legislation.

Q. What is the potential impact of these provisions on the Pacific territories?

A. The Administration believes that the overall impact of the extension of Headnote 3(a) treatment to the Freely Associated States will be positive. By regularizing and conforming trade and tariff arrangements among the Pacific island areas associated in one fashion or another with the United States, the basis for a regional economic approach is established and a more efficient allocation of resources, market-based production incentives and outside capital can develop over the long term. The comparatively greater level of infrastructure development and skilled labor in the United States Pacific territories will continue to attract investment. In light of this and in consideration of the finite duration of the extension of Headnote 3(a) to the Freely Associated States, there is no reason to believe that the United States Pacific territories will suffer any short term negative effect.

Q. Could the U.S. modify either the valuation or definition of certain articles from a particular territory without extending the same treatment to the FAS?

A. Yes, as stated above.

Section 251

Q. do each of the FAS have to enact domestic legislation to give effect to this section?

Q. Have they done so?

A. Approval of the Compact by the Freely Associated State government constitutes adequate authority to give effect to this Section.

Section 252

Q. Does this section exempt a U.S. person from U.S. taxes or would they be entitled to a credit for taxes paid to the FAS against U.S. tax liability?

A. Compact Section 252 recognizes the right of the Freely Associated States to tax income, property and transactions of United States persons that are within the jurisdictions of the Freely Associated States. It would not operate to exempt United States persons from United States tax or to provide a credit to such persons for taxes paid to the Freely Associated States.

Q. Does this section exempt FAS source income of U.S. persons from U.S. tax?

A. No.

Q. Does this section prevent the U.S. from including within the definition of income any income from a FAS source with or without provision for credit or deduction of any FAS taxes on such income?

A. No.

Q. Do you plan amendments to the Internal Revenue Code?

A. No amendments to the United States Internal Revenue Code are necessary to implement this Section.

Section 253

Q. How is domicile determined?

A. Questions of domicile will be determined according to the laws of the Freely Associated States with respect to this Section. The freely associated, like the United States, consider a person's domicile to be where he maintains his permanent home.

Q. What prevents the FAS from conferring "citizenship" solely for the purpose of tax avoidance under this section?

A. The Freely Associated States will be free to determine criteria for citizenship. In each case, the Freely Associated States have adopted stringent resident and other requirements for naturalized citizenship which, in the Administration's view, would operate to prevent the conferral of citizenship solely for the purpose of tax avoidance. It must be remembered however that Freely Associated State citizenship is insufficient to qualify for the exemption provided by Compact Section 253 which stipulates that only Freely Associated State citizens domiciled therein will qualify. Section 253 is limited to "citizens" of the Freely Associated States in order to assure that corporations or other artificial persons cannot qualify for the exemption which it provides. There are, of course, other provisions of the United States Internal Revenue Code (see sections 877 and 2107) which deny tax benefits to persons who have expatriated for the purpose of avoiding tax.

Q. Are similar provisions made for citizens of any other country or territory?

A. The principle upon which Compact Section 253 is based is similar to the application of Internal Revenue Code provisions to the United States Virgin Islands, Guam and the Northern Mariana Islands under which the United States allows local jurisdiction over the taxation of residents.

Section 254

Q. Does the first sentence confer authority on the FAS or does it describe a normal authority of a sovereign state over residents?

Q. If not, what is the source of the authority?

A. The language in question recognizes the authority and right of the Freely Associated States to tax its residents on their worldwide income, a practice of some, including the United States, but not all nations.

Q. Why are residents of the FAS relieved of all tax liability to the U.S. rather than being provided a credit or other relief?

A. Residents of the Freely Associated States who are otherwise subject to United States tax jurisdiction will be required to file tax return with the United States unless the Freely Associated State where they reside exercises its authority to tax their worldwide income. Were a "credit or other relief" provided by Compact Section 254 to these residents, they would be required to prepare and file two income tax returns, a burden which the Administration believes could operate to undercut the overall intention of this Section. The treatment provided in Compact Section 254 to Freely Associated State residents parallels the treatment applied to residents of the United States Virgin Islands, Guam and the Northern Mariana Islands.

Q. Does this section include corporate "residents"?

Q. If so, what would prevent corporations from so restructuring their activities to place principle residents in a FAS, allocate all income to the FAS "parent", and avoid all Federal taxes?

Q. If not, where does the distinction between corporate and individual "persons" exist?

A. Section 254 extends only to "individual residents" and thus not to corporations.

Section 255

Q. What specific provisions of the Internal Revenue Code are referred to?

A. Section 255 extends certain provisions of the United States Internal Revenue Code to the Freely Associated States for the same purpose these provisions have been extended to the possessions of the United States to which they apply, that is for the encouragement of economic development in these insular areas. Internal Revenue Code provisions which will apply to the Freely Associated States pursuant to Compact Section 255 are:

> Sections 33 and 936, credit against United States taxes for corporations engaged in an active business in the Freely Associated States;
>
> Section 48(a)(2)(B)(vii), investment tax credit for property used predominantly in the Freely Associated States;
>
> Section 103(a), exemption for interest on obligations of a Freely Associated State;
>
> Section 115(2), exemption for United States source income accruing to a Freely Associated State;
>
> Section 170(c)(1),(2) and (3), charitable contribution deduction for contributions made to a Freely Associated State charitable organization;

Section 501(e), exemption for cooperative hospital service organizations in the Freely Associated States; and

Section 274(h)(3)(A), deductibility of expenses of attendance at conventions in the Freely Associated States.

Q. Does this provision apply only to those provisions applicable to all insular possessions without distinction, and if distinctions exist, such as between sections 934 and 936 as of January 1, 1980, how do you determine what applies?

A. Section 255 will extend to the Freely Associated States provisions of the United States Internal Revenue Code which refer generally to "possessions." An Internal Revenue Code provision which refers to a single and specific United States territory, e.g. section 934 with respect to the United States Virgin Islands, would not apply to the Freely Associated States by operation of Compact Section 255. Internal Revenue Code section 936 applies to "possessions" generally and thus, although it happens to exclude the United States Virgin Islands, would apply to the Freely Associated States pursuant to Compact Section 255.

Q. Who will make the determination?

A. As mentioned in the preceding answer, the language of Compact Section 255 and of the provisions of the United States Internal Revenue Code that will extend to the Freely Associated States thereby is sufficiently clear to obviate the need for discretionary determinations.

Q. Do you plan on consulting with the Congress?

A. As in other matters, the Administration intends to consult regularly with Congress on the implementation of Compact Section 255, including questions with respect to the application of Internal Revenue Code provisions.

Q. Does this section pick up provisions of the Code such as charitable contributions, accelerated cost recovery, depreciation schedules, safe haven, sale of tax credits or deductions, tax schedules, etc.?

Q. If so, list all such provisions?

A. As stated and listed above, Compact Section 255 does extend to the Freely Associated States provisions of the United States Internal Revenue Code to the extent those provisions refer generally to "possessions".

Q. If so, list all changes made in such provisions since January 1, 1980 and the effect of such changes.

A. There have been no significant changes to such provisions since January 1, 1980 insofar as possessions are concerned. However, new accelerated cost recovery provisions mentioned in the preceding question were added to the Internal Revenue Code, in section 168, in 1981. Like the investment tax credit provisions, they are limited to property used predominantly within the United States which, under existing investment tax credit rules, includes property used predominantly in a possession, or, by virtue of Compact Section 255, a Freely Associated State. The regulations for the accelerated cost recovery provision will follow the regulations for the investment tax credit provisions.

Q. What happens if an agreement is not reached with respect to the effect of a change?

A. Were a dispute to arise between the United States and a Freely Associated State with respect to the implementation of Compact Section 255, it would be resolved exclusively in accordance with the conference and dispute resolution provisions of Article II of Title Four of the Compact.

Q. Must Congress approve any such agreement?

A. As state above, the Compact will have the force and effect of a law of the United States upon enactment and execution. Any agreement which alters or amends the terms of the Compact would need to be authorized by Congress, insofar as the United States is concerned.

Q. Do you plan to consult with Congress?

A. As in other matters, the Administration intends to consult regularly with Congress on the implementation of Compact Section 255.

The language of the last sentence seems to apply only to "benefits".

Q. Who determines what is a benefit?

A. The last sentence of Compact Section 255 addresses a situation in which the United States and the Freely Associated States will be negotiating the terms of a new agreement which shall provide benefits substantively equivalent to those which obtained in the provisions of the United States Internal Revenue Code which had been extended. Thus, the question of identification and determination of benefits will be a subject of negotiation and mutual agreement.

Q. Does this mean that the U.S. will not have the ability to close a loophole or correct abuse?

A. No, in fact Section 255 explicitly recognizes the continuing right of the Congress to enact, and the President to approve, amendments, modifications or repealers of the provisions of the Internal Revenue Code which are extended to the Freely Associated States pursuant to Compact Section 255.

Q. Does this mean that the U.S. cannot enact special provisions of benefit to the territories without also providing them to the FAS?

A. No. For example, the foreign sales corporation provisions of the Tax Reform Act of 1984 apply generally to possessions but, because they were enacted after January 1, 1980, they would not thereby extend by operation of Compact Section 255 to the Freely Associated States. To take advantage of these provisions, the Freely Associated States would have to meet the requirements that act applies to foreign countries but does not apply to United States possessions.

Q. List any provisions of the Code which are extended to the FAS under this section which are not available to each of the territories or which have been amended since January 1, 1980 to the detriment of one or more territory and explain why the FAS should be placed in a more favorable position.

A. Section 255 does not extend tax benefits to the Freely Associated States that are not enjoyed generally by "possessions" of the United States. There have been amendments made to Sections 103, 934 and 936 of the Internal Revenue Code since January 1, 1980 to change the method of application and to correct certain abuses involving the transfer of intangible property to a possession. Section 255 will not preclude the application of these new provisions to investments in the Freely Associated States. If a revision of these or other Internal Revenue Code provisions affects substantively the benefits which otherwise would have obtained pursuant to Compact Section 255, the United States and the Freely Associated States would have two years from the effective date of the Compact or from the date of any relevant Internal Revenue Code change thereafter, in which to negotiate benefits "substantively equivalent" to those which had applied under Compact Section 255. Thus, Compact Section 255 does not prevent the application to the Freely Associated States of changes made to Internal Revenue Code provisions after January 1, 1980. Rather, it provides a mechanism of mutual consent for the application of those changes, which mechanism is consistent with and supportive of the free association relationship the United States will have with those jurisdictions.

Q. Do the provisions of section 881 apply to the FAS as they did to Guam on January 1, 1980 and if so explain why Treasury wants to repeal those provisions for Guam and the Virgin Islands but supports their application to the FAS?

A. No, by reason of the fact that Internal Revenue Code Section 881 does not refer to "possessions."

Section 311

Q. What consultation with or action by Congress do you intend for each of the provisions of subsection (b)?

A. The authority and responsibility which the United States will exercise under Section 311 (b) will be implemented by the President as Commander in Chief. Congress will have the same formal constitutional role with respect to the activities which will take place pursuant to these provisions as it has in connection with providing for the national defense generally. Thus, while the President and the armed forces under his command would take appropriate action in accordance with applicable United States law to respond to or to prevent an attack upon the Freely Associated States, a war could not be prosecuted in the Freely Associated States without the required declaration by Congress.

Foreclosure of the Freely Associated States will be effected by the President and the armed forces under his command. Military operations in the Freely Associated States will take place in accordance with the terms of the applicable separate agreements, and as determined by Congress in allocating resources for that purpose.

In summary, Section 311(b) will be implemented by the President, but in accordance with the constitutional process applicable to the types of activities called for in this subsection. The President will consult with Congress regularly and comply with all applicable laws with regard to implementing each policy and activity element of this authority and responsibility in order to ensure that the United States exercises its authority under the Compact in a manner that enables it to meet its security and defense objectives in the region.

Q. Who will determine what constitutes "military personnel" or "military purposes"?

A. The President, in accordance with applicable law and policy, will make this determination. The issues of what type of activities by a third country in the Freely Associated States would be regarded as having a military nature will have to be determined on a case-by-case basis, although certain types of activities will be clearly understood as such. The provisions of the mutual security agreements concluded with each government and those in Title One, Article II of the Compact with respect to consultations on Freely Associated States foreign affairs matters will be utilized effectively to establish clear criteria for identifying the types of personnel and activities of a third nation which would require scrutiny as having possible military aspects. United States determinations in this regard, after the required consultations with the Freely Associated State in question, would be controlling.

Q. What consultation will be held with Congress?

A. No Administration could expect to sustain its approach to implementing these provisions without consulting with Congress regularly and in connection with significant developments regarding not only military and security matters but all aspects of Compact implementation. Congress has the authority to enact measures necessary and proper for the implementation of the Compact in accordance with its terms, and the President would be required to comply with such measures which become law and prescribe in a constitutional manner United States policy on these issues. Consequently, this and subsequent administrations will be required to consult and seek Congressional support for actions and policies in this area.

Q. Who will determine what constitutes an "attack" or "threats thereof"?

A. As stated above, in the first instance the President will determine if an attack or threat thereof exists, and as Commander in Chief will take appropriate action in accordance with the Constitution and laws of the United States, including the Compact. This would be a military decision, and depending on the nature of the attack or threat, as well as subsequent developments, may, or may not, require further formal action by Congress.

Q. What consultation will be held with Congress?

A. On any matter of this importance, as well as in developing policies and guidelines for responding to such a situation, consultation with Congress would be regular and as extensive as circumstances might warrant.

Section 313

Q. Do you plan on involving the Congress in any fashion under this section?

A. In establishing policies for the implementation of this Section and enforcing it in a specific instance, this Administration would certainly consult with Congress, and as stated above, believes this would be required for any future administration. Implementation of this provision will be a foreign affairs and national defense policy exercise which will be carried out by the Executive Branch in accordance with applicable law.

Q. Will it be necessary to spell out procedures for such consultation?

A. The Executive Branch agency which is responsible for managing the free association relationship will establish such procedures. The Administration does not believe it is necessary or appropriate for this matter to be addressed in legislation.

Section 314

Q. Could you clarify what you mean by "national emergency" in subsection (b)?

A. This term refers to a condition or set of circumstances which might arise requiring our government to take measures to ensure that United States security and defense interests are preserved and protected, or to ensure that the safety, security or well-being of United States citizens, the Freely Associated States or an ally of the United States is protected from unacceptable risk.

Section 322

Q. Does this provision require either authorization or appropriation?

A. The United States Coast Guard will be responsible for this activity under the Compact, and is currently converting navigational aids in Micronesia to low-maintenance installations. Funding for this activity is included in the Administration's budget request for the first year Compact appropriation.

Q. Could additional aids be provided beyond those necessary under Title Three?

A. It is the Administration's understanding that the aids being installed at this time will be adequate for both the purposes set forth in this Section and for general commercial and private navigation in the islands. This Section does not preclude installation of additional aids as might be authorized at a later time.

Section 341

Q. Would persons covered by this section be eligible to become officers?

A. Generally, no. It is not unprecedented for non-citizens to become commissioned officers, but as a practical matter the procedure would be for a citizen of the Freely Associated States to seek United States citizenship and then apply for commissioning as an officer.

Q. Are there any limitations on types of service in the Armed Services for which such persons would be eligible?

A. While service in the enlisted ranks would be generally unlimited, certain restrictions might be imposed with respect to such matters as preserving military security. However, this would be extraordinary for most assignments and as a matter of routine anyone qualifying for service would have available to him or her a full range of assignments and opportunities.

Section 351

Q. Do you plan to involve or consult with Congress under this section?

A. Generally, the dispute procedure prescribed in this Section will be implemented by the Executive Branch, and is to be viewed as a matter of carrying out the provisions of the Compact in the manner prescribed by Congress in approving the agreement. Consultation with Congress is intended in connection with implementing these provisions.

Q. How?

A. The Executive Branch would be obliged to advise Congress at any time upon request with a complete account of what matters may have been referred to the Joint Committees and any actions which may have resulted. Whenever any issue of special significance arises, consultation should be expected.

Q. Do you plan to advise or consult with Congress in the event an issue arises under subsection (b)?

A. Certainly any issue which which is not resolved by a Joint Committee and which is referred back to the governments for resolution, or which is raised with the Secretary of Defense under Subsection (b), would be an appfopriate subject for consultation with Congress. The procedure for determining the United States response to a situation prescribed by this Section would require Executive Branch action, and no Congressional action would be required.

Section 354

Q. What consultation do you plan to have with Congress under subsection (a)?

A. Should the Executive Branch seek to amend the provisions of the Compact under Article III of Title Four, the United States constitutional process for doing so would include Congressional enactment of the amendment. Should the provisions of the Compact which otherwise expire on its fifteenth anniversary be extended under Section 231 for two additional years, this would occur pursuant to the express provisions of that Section and additional authorization by Congress would not be necessary, although Congress would be fully consulted with respect to negotiations regarding arrangements to be established following the expiration of those provisions. The Executive Branch would be authorized under the terms of the Compact to effect termination as contemplated by this Section as it refers to Section 441, but would be required to do so with Congressional concurrence in order to obtain enactment of the statutory regime established to replace that which Congress provided in approving the Compact. To ensure continuity and preservation of United States interests, termination under Section 441 would not occur except in conjunction with such Congressional approval and enactment of substitute legislation.

Q. Would any alteration pursuant to Section 231, 441 or Article III of Title Four require Congressional approval?

A. The preceding answer addresses this question.

Section 411

Q. Is there a difference between the effective date of the Compact and the date on which the Compact shall come into effect?

A. No, these terms are synonymous.

Q. Do you plan to implement any provisions prior to the effective date?

A. It is the intention of the Administration to implement all of the provisions of the Compact at the same time. This approach to full implementation contemplates termination of the trusteeship at the time the Compact enters into force.

Q. If not, why were federal agencies directed by OMB not to include provision for funding programs in the Trust Territory in their FY'85 justification?

A. Upon the assumption that the Compact would enter into force on the first day of fiscal year 1985, the Administration adopted a government-wide approach to the termination of those programs which would not continue under the terms of the Compact. However, to take into account the contingency that Congressional enactment of the Compact is delayed thus preventing execution of the Compact on that date, the Administration would continue the federal programs and activities, in accordance with appropriations acts, which would otherwise be available to the Trust Territory until the Compact comes into effect.

Section 431-432

There is some uncertainty with respect to your previous answers to the questions on these sections and the answer to 6.62.F on legal status of the Compact. Your answer under 6.62.F states that the Compact and certain provisions of certain subsidiaries "will therefore be enacted into law" yet you also indicate that the Executive Branch could effect a change without submitting the change to Congress.

Q. Why should not any provision enacted into law not require legislation to change it?

A. Legislation would be required to change the Compact or any separate agreement provisions which have the status of statute law. It would not be required for amendment of executive agreements between the United States and the Freely Associated States.

Q. Must Congress approve any such amendment?

Q. If not, why not?

A. Yes, to the extent stated in the previous answer.

Section 441 et seq.

Q. If Congress is being asked to approve the Compact why should not any action by the U.S. either unilaterally or by mutual agreement to terminate the Compact also be approved by Congress?

A. Mutually agreed or United States unilateral termination of the free association relationship would occur pursuant to authority vested in the President by Congress and in accordance with the procedure set forth in the Compact. This is appropriate because termination would be primarily an exercise of the foreign affairs authority of the President. If the free association relationship were being terminated mutually pursuant to Section 441, the President would seek Congressional enactment of a substitute legal regime for this nation's relationship with the Micronesians before completion of the termination process. If the free association relationship were being terminated unilaterally by the United States pursuant to Section 442, the President, in making this determination, would be exercising his foreign affairs authority. Congress, in its original approval of the Compact, would have prescribed that the basic elements of the Compact would remain in effect for their initial fifteen year period irrespective of any termination of the free association relationship and the President could not terminate these elements of the Compact without Congressional approval. In contemplating an action as grave as terminating unilaterally the free association relationship, the Administration believes that the executive branch would proceed on the basis of full consultation with and the concurrence of the Congress.

Section 451

Q. Must Congress approve such an agreement?

A. Yes, to the extent authorization of funds would be necessary. It is contemplated that if termination of the free association relationship occurs pursuant to Section 441, the United States and the Freely Associated States in question would do so on the basis of a mutually agreed concept of the nature of their relationship to follow free association. For the United States, Congressional enactment of the terms of that new relationship would undoubtedly be required.

Section 452

Q. Must Congress approve any agreements under this section?

A. The executive branch would need to seek and gain Congressional enactment of arrangements to extend, on a mutually agreed basis, those provisions of the Compact which would otherwise expire on the fifteenth anniversary of the Compact's effective date.

Q. Do you plan to consult with Congress?

A. Yes.

Section 463

Q. What changes have been made since January 1, 1980 to any provisions of the U.S.C. referred to in subsection (a) and what is the effect of those changes?

A. A recent examination of the cited statutes revealed that while Congress has recodified some of the cited provisions, in some cases with minor revisions, no substantive changes which would materially alter the effect of any of these provisions appear to have been made.

Resolution Section 2

Q. On page 85, line 15, should "residences" be either "residence" or "residency"?

A. "residence."

Q. What is the effect of this section?

A. This Section vests in the United States District Court for Hawaii jurisdiction over crimes committed on defense sites in the Freely Associated States, prescribes for such crimes a body of criminal law (Hawaii's state criminal code), and authorizes the appointment of magistrates to preside in criminal prosecutions arising under this Section. In the absence of this provision, no Federal court would have jurisdiction over crimes committed in the Freely Associated States on United States defense sites. Under the Status of Forces Agreement concluded pursuant to the Compact, the United States will have the right to exercise criminal jurisdiction, and these provisions are required to enable a United States court to exercise that jurisdiction.

Q. Why is it necessary?

A. Preceding answer addresses this question.

Q. What agency will make the determination on funding for Palau?

A. Generally, agencies authorized to make grants for activities in the trust territory either have a formula for allocating funds as between the FSM, Marshall Islands and Palau, or they make the funds available to the Trust Territory Government for allocation. Under Section 3, the agencies involved will determine the level of funding which would have gone to Palau out of the current or the next fiscal year's budget, as the case may be. If they need or desire to utilize the Trust Territory Government as the vehicle for determining a formula of for allocating funds, such would be appropriate as well.

Q. Must such determination be as provided in appropriation acts?

A. Yes, to the extent of availability of funds and if such acts require a particular allocation.

Subsidiary Agreements

Provide a list of all similar agreements which the U.S. has entered into with other countries and indicate what differences exist and the reasons of the differences.

A. The United States has numerous military use and operating rights agreements, extradition agreements, SOFA agreements and other types of assistance agreements with many nations. The separate agreements concluded pursuant to the Compact are notable in that they are modeled after standard government-to-government agreements, varying in certain respects as appropriate in light of the special features which distinguish free association from conventional international relationships.

For example, the extradition and prisoner exchange provisions of the Section 175 agreement are modeled after extradition agreements we have with other nations. However, under Title Four, Article IV, Section 4(b), the requested country must transfer a prisoner in the absence of countervailing factors which must be specified. This special provision accommodates the unique cultural considerations related to enforcement of penal sanctions against Micronesians in United States and vice versa.

Other examples of unique arrangements in otherwise standard documents are the claims and criminal jurisdiction provisions of the SOFA agreement. The Article XVI claims provisions utilizes the Foreign Claims Act and the claims provisions of Compact Section 174 to deal with very complicated statute of limitations problems arising from the trusteeship relationship. The criminal jurisdiction provisions of Article XII give the United States the right to exercise jurisdiction over a broad range of crimes, but calls for periodic review of the arrangement to assess its appropriateness.

Finally, other separate agreements are modeled structurally upon standard international agreements to which the United States is a party, but deal with matters utterly specific to our relationship with the Freely Associated States. These are the telecommunications agreements under Article III of Title One, the nuclear claims agreements under Compact Section 177, the Federal Services and Programs Agreement and the Federal Property Transfer Agreement under Article III of Title Two and the mutual security agreements under Article II of Title Three. Because of specific provisions in the constitution of the Federated States of Micronesia and the undertakings of the signatories of the Compact in Section 471, the separate agreements to the Compact also include a bilateral agreement addressing maritime space and jurisdiction.

Q. Is it necessary to enact legislation to implement the provisions of Article IX, Section 5 of the Federal Programs subsidiary?

A. Compact Section 221(a)(5) would give the provisions of paragraph 5 the force and effect of law, and would provide the statutory authority for implementation. However, the Administration is currently considering legislation to provide specifically for the terms of implementation of these provisions.

Q. When do you plan to submit such legislation?

A. The Administration will submit any additional implementing legislation after Congressional approval of the Compact.

Q. Can the Mutual Security Agreement with the Marshall Islands be terminated by the U.S. without the approval of Congress?

Q. Can the Friendship, Cooperation, and Mutual Security Agreement with the FAS be terminated by the U.S. without the approval of Congress?

A. The authority of the executive branch to implement the mutual security agreements is set forth in Compact Section 354 and Congressional authorization for their duration is provided in Compact 454 (b). In light of this, and in consideration of strong Congressional interest in the duration of the terms of the mutual security agreement, this Administration believes that the correct procedure for termination of the mutual security agreements is through the exercise of the President's foreign affairs authority with the concurrence of Congress and the enactment of an appropriate alternative statutory regime, if any is necessary.

Appendix B.

AGGREGATE UNITED STATES GRANT, PROGRAM AND SERVICE ASSISTANCE TO THE TRUST TERRITORY OF THE PACIFIC ISLANDS NOT INCLUDING THE NORTHERN MARIANA ISLANDS

($ in millions)

	Operations	Construction	Programs	Total
1970				50.5
1971				63.0
1972				64.1
1973				64.8
1974				70.3
1975				84.2
1976				105.8
1977				107.8
1978				130.5
1979	26.4	47.3	39.6	113.3
1980	31.0	41.9	35.0	107.9
1981	39.3	24.4	35.7	99.4
1982	44.2	6.9	36.5	87.6
1983	48.3	14.9	37.0	100.2
1984	60.2	27.2	38.0	125.4
Total	249.4	162.6	221.8	1374.8

Note: Figures for FY 1979 through FY 1984 do not reflect funding for Palau nor funding made available for the use of the Kwajalein Missile Range under the Interim Use Agreements.

Official Committee File

THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
AUG 28 1984

AUG 27 1984

The Honorable James A. McClure
Chairman, Committee on Energy and
  Natural Resources
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In my letter to you of August 21st, I forwarded the Administration's response to the 356 questions which your Committee submitted to us after its hearing on the Compact of Free Association (SJR 286).

Regrettably, Attachment A to these questions, which is referred to in the third question, was omitted. Please find enclosed Attachment A.

Sincerely,

Fred M. Zeder, II
Ambassador

Enclosure:
  Attachment A

APPENDIX A

(SUMMARY BY TERRITORY WITHIN CATEGORY)
STATUS REPORT ON TECHNICAL ASSISTANCE PROJECTS
As of 12/31/83

DESCRIPTION OF PROJECT	TERRITORY	FUNDS COMMITTED	RESPONSIBLE OFFICER	REMARKS
A. FINANCIAL & EDP				
1a. Financial Management Systems	Federated States of Micronesia	$2,026,000	TIA Staff	Systems are operational in Palau, Ponape and Majuro, and training is continuing. Installations for Truk, Kosrae, and Yap are scheduled during FY 1984.
"	Marshall Islands	520,000	"	
"	Republic of Palau	460,000	"	
1b. Hire Technical Assistance Advisor to Assist Governments Operate & Maintain Systems	Federated States of Micronesia	45,000	"	These contract employees are working directly with each of the governments and are assisting on operation of systems and training of personnel.
"	Republic of Palau	40,000	"	
"	Marshall Islands	40,000	"	
"	TTPI Headquarters	35,000	"	
1c. Financial Management Improvements (Reconstruction of General Ledger Accounts)	Federated States of Micronesia	10,000	"	A contract has been let to develop and implement new General Ledger accounts to be used with the new computer system.
C. HEALTH				
1a. Sanitation Specialist	Federated States of Micronesia	$ 50,000	TIA Staff	Arrived on Truk July 1983
1b. Lab Technician	Federated States of Micronesia	11,000	"	Arrived on Truk September 21, 1983
1c. Health Management/Hospital Advisor	Federated States of Micronesia	40,000	"	Individual has been hired
1d. Medical Referral Programs	Marshall Islands	30,000	"	In the process of review by RepMar
1e. Training school for Medical Officers	Federated States of Micronesia	140,000	"	In process

DESCRIPTION OF PROJECT	TERRITORY	FUNDS COMMITTED	RESPONSIBLE OFFICER	REMARKS
D. COMMUNICATIONS				
1a. Communication Advisor	Federated States of Micronesia	$ 150,000	TIA Staff	Advisors are assisting local government personnel to interface with Satellite Communications System and train local personnel
"	Marshall Islands	50,000	"	
"	Republic of Palau	75,000	"	
1b. Information Broadcasting Training	Federated States of Micronesia	15,000	"	Planned for May 7-25, 1984.
Total Communications		$ 290,000		
F. ECONOMIC DEVELOPMENT				
1a. Sea Transportation Study	Federated States of Micronesia	125,000	"	FSM is reviewing proposals received from several companies
1b. Planner	Republic of Palau	40,000	"	Funds are available to hire a planner to assist and complete the staffing of the ROP National Planning Office.
G. MAINTENANCE				
1e. Inventory of all CIP Projects	Federated States of Micronesia	$ 90,000	TIA Staff	Project is underway and is planned to be completed during fiscal year 1984. An expert advisor in Engineering and Maintenance control has been hired to assist the FSM develop a complete physical inventory of all infrastructure in the states.
1f. Preparation of Civil Aviation regulations	Marshall Islands	$ 87,000	TIA Staff	Draft of regulations are being reviewed by Republic of the Marshall Islands staff
H. GENERAL				
1a. Fire Training	Trust Territory of the Pacific Islands	25,000	"	Completed in December 1983.
1b. Law Enforcement Training	Trust Territory of the Pacific Islands	43,000	"	In Process
1c. PROC Air Transportation Study	Trust Territory of the Pacific Islands	10,000	"	Aircraft control and operational regulations are being developed with assistance of the F.A.A.
1d. Land Survey	Republic of Palau	20,000	"	In process
1e. Organization and Pay System Study	Republic of Palau	40,000	"	The team completed a draft report and submitted recommendations to the Republic of Palau in January 1984.

THE PRESIDENT'S PERSONAL REPRESENTATIVE
FOR MICRONESIAN STATUS NEGOTIATIONS
WASHINGTON, D.C. 20240

July 13, 1984

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
JUL 16 1984
WASHINGTON, D.C. 20510

The Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During your Committee's May 24 hearing on S.J. Res. 286 I undertook to provide written comments responding to certain points raised by Senator Hatch, as well as statements made by other witnesses. This letter addresses the matters discussed by the Senator and the witnesses as identified below. I am also attaching background materials prepared by my staff which address legal and constitutional aspects of the Compact and the Section 177 nuclear claims agreement. I request that this letter and its attachments be included in the record of the May 24 hearing.

Senator Hatch's Remarks Regarding the Marshall Islands Nuclear Claims Settlement and Domestic Nuclear Claims Cases:

The Administration appreciates Senator Hatch's expression of support for the Compact of Free Association and the agreement concluded pursuant to Compact Section 177, which settles all Marshallese claims arising from the United States nuclear testing program in the Marshall Islands. We recognize and respect the Senator's long-standing commitment to resolving issues arising from the domestic atmospheric testing program. However, as I stated during my testimony, the Administration believes that there are fundamental and controlling factual and legal distinctions between the issues addressed in the Section 177 Agreement and the issues involved in the domestic test claims. We believe these distinctions significantly outweigh any of the general similarities which may exist between these two situations. Under present circumstances the approach to settlement of the Marshallese claims which we have taken in the Section 177 Agreement would not be appropriate or necessary in a domestic legal context in which the claimants have access to our courts. However, the fact that we have developed a basis for disposition of those claims within the framework of the Compact is certainly not in any way prejudicial to the remedies which may be made available to domestic nuclear test claimants in accordance with our Constitution and laws. The following background information may help clarify the issues involved in the Marshall Islands settlement and serve to explicate the position of the Administration.

In 1947 the United States was designated to act as Administering Authority for the islands of Micronesia, which includes the Marshall Islands, under a Trusteeship Agreement with the Security Council of the United Nations. The inhabitants of the Trust Territory are not United States citizens and the provisions of the Constitution and laws of the United States do not apply to Micronesia or the peoples of the Trust Territory, except to the extent that Congress has made them applicable pursuant to the Trusteeship Agreement.

As authorized under the terms of the Trusteeship Agreement, the United States has conducted military operations in the Trust Territory deemed necessary and consistent with considerations of international peace and security. In this connection the United States conducted a series of nuclear tests in the Trust Territory between 1946 and 1958. In order to conduct these tests the peoples of Enewetak and Bikini were relocated from those atolls to other islands. During the course of the testing program sixty-six nuclear tests were conducted at Enewetak and Bikini. The resulting radiological contamination of the islands of those two atolls has made it impossible to resettle the people of Bikini, while the people of Enewetak could not be resettled until 1979 when some of the islands of that atoll were rehabilitated and determined to be safe. In addition, as a result of a nuclear detonation on March 1, 1954, the people of Rongelap and Utirik were exposed to high-level radiation which has produced long-term health effects among those two populations. As discussed further below and in the attachments, the Marshallese experience was distinctly different from that of persons who have made claims in connection with the domestic nuclear tests. In the domestic tests there were no relocations, and no exposures (accidental or otherwise) at anywhere near the levels of magnitude involved at Rongelap and Utirik.

Under the Trusteeship Agreement the United States agreed to promote progress toward self-government for the peoples of the Trust Territory in accordance with their freely expressed wishes. Pursuant to that obligation the

United States has conducted negotiations with the representatives of those peoples over the last fourteen years regarding their future political status upon termination of the Trusteeship. In 1980 the people of the Marshall Islands voted to approve their Constitution and in 1983 the Governments of the United States and the Marshall Islands signed the Compact of Free Association, which provides the basis for termination of the Trusteeship in favor of self-government for the Marshallese people. The Compact, which also provides for settlement of all Marshallese nuclear test claims, was approved by the people of the Marshall Islands in a UN-observed plebiscite conducted on September 7, 1983.

In the context of the transition to self-government which is now taking place in the Marshall Islands there exists for the first time since the tests were conducted a government-to-government framework for addressing the claims of Marshallese citizens arising from the nuclear testing program. In the past, payments to individuals, island rehabilitation projects, resettlement assistance and medical services have all been provided to the affected peoples, but these measures were undertaken by the United States on an ex gratia basis in order to ameliorate the hardships experienced by the affected Marshallese. With the establishment of self-government for the Marshall Islands continuation of unilateral United States measures taken on an ad hoc and discretionary basis would no longer have been appropriate. Consequently, during the political status negotiations both governments viewed final settlement of all claims -- under terms which provided a definite and permanent means of addressing the needs of the affected peoples -- as an essential element of any future political status arrangements to be implemented upon termination of the trusteeship. Thus, the Section 177 Agreement is but one element of an overall political process involving significant United States foreign affairs and national security interests. Absent such an agreement, the issues surrounding the claims would remain unresolved, and would serve as a source of friction in the relations between the two governments in the post-Trusteeship era.

In suits that have been filed in United States courts based on the Marshallese claims, the United States has asserted what it regards as sound jurisictional and substantive defenses. The United States was and continues to be prepared to litigate those claims. The Compact in no way represents a judgment by the United States of the value or merit of the Marshallese nuclear test claims. Indeed, the Section 177 Agreement was negotiated for purposes other than to simply dispose of those court cases. Rather, the United States has long recognized that the unique factual, political and legal circumstances surrounding the Marshallese tests and the effects thereof required that special measures be taken in order to enable the United States to fulfill its obligations as Administering Authority under the Trusteeship to the peoples displaced and injured by the Marshall Islands tests (including injury and displacement which, as noted, have no direct parallel in the domestic test claims). This Government also recognized the need to resolve all significant legal and political issues arising from United States administration of the Trust Territory in connection with termination of the Trusteeship and cessation of the United States role as Administering Authority.

In addition to Section 177, the Compact contains many other provisions which are intended to achieve permanent disposition of matters related to the role of the United States as Administering Authority. The Compact, like many international agreements, enables the governments concerned to accomplish mutually agreed upon objectives, such as settlement of claims, through accepted foreign affairs procedures which would not be possible or appropriate in a purely domestic legal context. Simply stated, the Section 177 Agreement settles foreign claims of foreign citizens on a government-to-government basis, and in a manner entirely consistent with United States practice in international relations and law. Unlike the Marshallese claimants, those United States citizens who have claims arising from the domestic testing program have available directly to them the remedies which can be obtained in accordance with our domestic constitutional, judicial and political processes. The legal and political relationship between the United States and its citizens and that which exists between the United States and the citizens of the Marshall Islands acting through their Constitutional Government are not the same, and the distinctions which must be recognized in this respect justify and indeed require that different constitutional and legal procedures be followed in addressing their respective claims against this Government.

Notwithstanding the views expressed above, I wish to commend Senator Hatch for his dedication to the people he represents. It is my sincere hope that the complex legal, political and human problems at issue in the domestic claims cases can be resolved in a proper and satisfactory manner.

Statement of Stephen Schulman on behalf of Kwajelein Atoll Corporation:

Pursuant to Section 321 of the Compact, the United States and the Marshall Islands have concluded an agreement regarding the continued use of sites within Kwajalein Atoll where a missile testing range has been established. It is the practice of the United States throughout the world to enter into such agreements on a government-to-government basis. The other government concerned then makes land available as required by the applicable agreement and in accordance with its constitutional and legal processes. During the transition to a new political relationship in which relations will be conducted on a government-to-government basis the United States and the Marshall Islands have worked closely with the affected Kwajalein landowners in negotiating these arrangements and establishing the terms for future United States use of certain areas at Kwajalein.

Under the Compact and the Military Use Agreement the United States acquires the right to use Kwajalein for fifteen years, with an option to extend its use for an additional fifteen. I do not know how Mr. Schulman arrived at the forty year figure. Funding is provided in the Compact and the Military Use Agreement for just and adequate compensation of all affected landowners by their Government.

It should also be noted that free association does not automatically terminate at the end of fifteen years. Rather, the political relationship of free association continues until it is terminated by one of the parties. While certain of the basic provisions defining the obligations and commitments of the governments during the initial fifteen years expire at the end of that period, those arrangements are subject to renegotiation and could be modified or terminated in whole or in part in favor of other arrangements without terminating free association.

Of course, free association could be terminated in favor of another political status before or after the expiration of the initial fifteeen year period. Under various circumstances numerous provisions of the Compact setting forth rights and obligations of the signatory governments could continue beyond termination of free association. For example, the termination provisions set forth in Title Four provide for continuation of United States financial assistance to the Marshall Islands for fifteen years even if termination of free association occurred earlier. United States defense rights and obligations would also continue. The principle underlying these provisions is to preserve stability and continuity as the relationship evolves, or even if it is terminated. All the people of the Marshall Islands voted on the Compact as a package, and the concept of staggered periods for the duration of various provisions was part of the overall arrangement. This approach protects Marshallese as well as United States interests.

In addition, contrary to Mr. Schulman's statements the Military Use Agreement is not the only provision which by operation of its terms extends beyond fifteen years. For example, United States defense obligations and the strategic denial arrangements set forth in the Mutual Security Agreement continue until otherwise mutually agreed, and United States financial assistance obligations related to use of Kwajalein also continue in accordance with the terms of the Military Use Agreement.

These essentially technical matters aside, I would like to address Mr. Schulman's basic premise that the people of Kwajalein are being forced to accept an arrangement for use of Kwajalein which is part of a Compact that did not receive majority approval by the voters of Kwajalein. According to this theory the vote of the people of Kwajalein should be controlling with respect to the Military Use Agreement because its duration exceeds that of other Compact provisions and only affects Kwajalein. This argument raises some interesting questions:

-- Under Mr. Schulman's theory would the Marshall Islands-wide plebiscite results be valid as to the first fifteen years since the Compact and the Military Use Agreement are coterminous to that extent?

-- If Mr. Schulman's point is really that only the people of Kwajalein have the right to vote on any Military Use Agreement which the Marshall Islands enters into with the United States and which involves Kwajalein, which Marshallese people in Kwajalein should be allowed to vote on the issue?

-- Should the affected landowners alone have the vote, or should Marshallese from other islands who are residing in Kwajalein also vote?

-- What percentage of the Marshallese voters on Kwajalein are landowners who have any property interest affected by the Military Use Agreement?

-- If a Marshallese from Majuro residing in Kwajalein is allowed to vote on the terms of an international agreement entered into by the Government, will this violate the constitutional rights of the majority of Marshallese not living in Kwajalein?

-- Should the vote within a demographic subdivision of the Marshall Islands take precedence over a Marshall Islands-wide act of self-determination because of local interests on one issue?

-- If so, how does this affect the authority of the elected government to conduct foreign affairs as provided under the Marshall Islands Constitution?

-- Does a defense agreement between the constitutional government of the Marshall Islands and the United States really affect only the people of Kwajalein, or is it an important element of the overall political relationship which is being established under the Compact?

I believe these questions and the answers they demand indicate that this witness has not recognized adequately the historic process by which the Marshall Islands are being transformed from a collection of atolls with only a language in common into a cohesive political community and emerging member of the international community. Approval of the Compact and its related agreements, including the Military Use Agreement, by the people and government of the Marshall Islands represents fulfillment of one of the basic objectives of the Trusteeship Agreement, which is to foster the establishment of democratic institutions and promote self-government. The ability of the constitutional government of the Marshall Islands to function on an international plane and enter into government-to-government agreements is essential to the realization of the political and economic aspirations of the Marshallese people, as expressed in the plebiscite on the Compact and the earlier referendum on their Constitution. Essentially, Mr. Schulman advocates political fragmentation in the Marshall Islands, which would be a step backwards in the advancement of the Marshallese people toward political and economic self-determination. Rather than using regional voting results as a basis for attempting to repudiate the results of the democratic process, the correct and constructive course for Mr. Schulman and his clients is to advocate their views among the voters of the Marshall Islands and influence the policies of the government through the electoral process. They have a constitutional political system and a system of laws which protect their rights as landowners. If their rights have been violated or they have evidence of any abuses there are remedies available to them under the Constitution and laws of the Marshall Islands. Whether the issue is the price they are paid for the lease or purchase of their land, or the future political status of the Marshall islands, the Marshallese people are now among those fortunate peoples in the world today who are able to rely on democratic processes in conducting their public affairs.

Statement of Jonathan Weisgall, Bikini Lawyer:

The Administration's views on the Section 177 Agreement and most of the points raised by Mr. Weisgall are contained in the background paper on that agreement which we have attached. However, there are a few points I wish to address here.

Mr. Weisgall states that removal in 1946 of the 167 people of Bikini from the 2.3 sq. miles of land in their atoll, and use of the islands of Bikini for nuclear testing, was "a clear violation" and "breach" of the Trusteeship Agreement. His opinion is based on Article 6 of that agreement, under which the United States agreed to protect the inhabitants from the loss of their lands and resources. However, protecting the people from the loss of their land is not the only obligation which the United States has had under the Trusteeship. Under Article 5 of the Trusteeship Agreement the United States is obligated to ensure that the Trust Territory is administered in a manner consistent with considerations of international peace and security. To that end, the United States is specifically authorized under the agreement to establish military bases, erect fortifications and conduct military operations in the Trust Territory. Does Mr. Weisgall suppose that the Security Council, in accepting the terms of the Trusteeship Agreement, expected all land use requirements arising in connection with these obligations and activities to be satisfied without utilization of the land or resources of the inhabitants of the Trust Territory?

Obviously, the Trusteeship Agreement itself contemplated the possibility that the United States would have land use requirements in the Trust Territory, and there is no prima facie breach of the agreement because land was used and damaged. Nor, in light of valid considerations of international peace and security in 1946, was the manner in which the nuclear tests were conducted a criminal violation of human rights -- as Mr. Weisgall claimed last May at the annual session of the UN Trusteeship Council in response to questions from the representative of the U.S.S.R. Rather, the testing program and United States measures to compensate the affected peoples for their losses and hardship incident to the testing program constitute a record of United States commitment to fulfilling all the objectives of the Trusteeship, not merely those to which Mr. Weisgall selectively refers in his presentations condemning United States administration of the Trusteeship.

The United States has accepted responsibility for injuries and losses resulting from our testing program in the Marshall Islands, and the Section 177 Agreement constitutes an equitable and rational approach to settling the Marshallese claims. The statements of witnesses such as Mr. Weisgall and his clients in testimony before this Committee, supporting passage of the Compact and the Section 177 Agreement, should be given careful consideration by the Committee in evaluating his assertions with respect to the injustice its provisions would work upon the Bikini people. While it comes as no surprise that lawyers for the nuclear test claimants are seeking commitments for relief in addition to that provided in the agreement, it is important to put their statements in this regard into proper perspective. For example, Mr. Weisgall himself provided us with an insight into his thinking on this point in his testimony on February 7 before the Subcommitee on Public Lands and National Parks, House Committee on Interior and Insular Affairs. In connection with his proposal that the law creating the $20 million Bikini resettlement trust be amended to allow resettlement outside the Marshalls, the question was raised as to whether the Bikinians would become welfare recipients if they settled in Maui, Hawaii. In his response Mr. Weisgall pointed out that in addition to the substantial trust funds already created by Congress, his clients would be receiving substantial income under the Section 177 Agreement. This was after he had condemned that agreement -- at some length -- as an unconscionable evasion of United States moral and legal obligations to his clients! Could it be that Mr. Wesigall is counting his chickens even as he damns them for hatching?

Statement of David Anderson, Enewetak lawyer:

Before addressing the issues raised by Mr. Anderson, I want to remind the Committee that the people of Enewetak voted by a 75% majority to approve the Compact and the Section 177 Agreement. With that thought in mind, even a cursory review of Mr. Anderson's testimony becomes somewhat of an exercise in cognitive dissonance.

Mr. Anderson's analysis of the financial elements of the Section 177 Agreement proceeds from a false premise, and his account of the Administration's position on various issues both now and during the negotiations is inaccurate to the point of being misleading. For example, Mr. Anderson's conclusion that the Section 177 Agreement is worth only $5 million to his clients is derived from flawed computations. First, he attributes to the $48.75 million payment to be made to his clients a present value of $25 million. However, the Section 177 Agreement contemplates that a significant portion of this funding, whether converted to present value or not, will be invested. By ignoring this and assuming zero growth Mr. Anderson has understated the value of the settlement to his clients.

With respect to resettlement of Enjebi, while certain proposals have been made, neither this nor any previous Administration has ever assumed an obligation for a resettlement project. The Section 177 Agreement is a comprehensive settlement of the claims of the Enewetak people which is fair and adequate considering, among other things, the massive Enewetak cleanup project (costing over $100 million) and all the other measures taken for the Enewetak people at great cost. Once the Compact is in effect the people of Enewetak will have the means with which to resettle Enjebi if that is their desire. Thus, the Administration rejects Mr. Anderson's notion that the payments to be provided to the people of Enewetak under the Section 177 Agreement should be devalued by $10 million because resettlement of Enjebi is not specifically provided for under the agreement.

With respect to food assistance, during the negotiations the United States did in fact put a price tag upon feeding programs. We also offered to identify and include funding for these programs in the agreement. However, based on views expressed by the Marshallese claimants and their lawyers to the effect that they would rather have the funding and purchase their own food, we agreed to incorporate that funding into the lump-sum payments being made to each claimant group for which feeding program funds had earlier been identified. The amounts specified in the present Section 177 Agreement for those claimant groups include the funding that had been designated for food programs. Thus, we must also take issue Mr. Anderson's conclusion that the value of the Section 177 Agreement to the Enewetak people should be computed at $7.2 million less than the amount stated due to the absence of separate feeding program funding.

This witness would also reduce the value of the Section 177 Agreement by the $3 million which he believes the people of Enewetak would be entitled to if Public Law 96-205 were carried out according to various proposals which have been made for its implementation. It is the view of the Administration that the Section 177 Agreement fulfills the purposes of that law. Thus, in summary we find Mr. Anderson's representations to the Committee to be without basis.

Statement of Richard Gerry, MIATLP lawyer:

In addition to the attached background paper which addresses many of the issues raised by Mr. Gerry, the Department of Energy will submit a statement clarifying certain technical matters to which Mr. Gerry has referred.

Statements of United States Tuna Foundation and American Tunaboat Association Representatives:

We have had several meetings with representatives of the industry to discuss the Compact, and we have been aware for some time of the concerns which they have expressed to the Committee. I believe we have given the United States tuna industry the assurances they need and deserve that the Compact will not be implemented in a manner which places the industry in an untenable legal or economic position. Nevertheless, it is understandable and proper that they would appear before the Committee and reiterate their concerns for the record. We welcome the opportunity to respond for the record and state to you what we have stated to them on many occasions in the past.

The Reagan Administration has an overall goal to protect and promote American commercial interests to the greatest extent possible. In the setting of the Micronesian status negotiations this means that, consistent with our present obligations under the Trusteeship Agreement and the parameters of the Compact which will apply in the future, we will continue to seek ways to implement our national responsibilities to the benefit of American commercial interests. This is precisely the attitude we will apply upon entry into force of the Compact of Free Association.

The basic issue which gives rise to some of the tuna industry concerns is that of Freely Associated State authority over their own foreign affairs, including marine resources matters. The determination that continued United States recognition of that authority under the Compact would be appropriate was not made without careful consideration by the Executive branch of the industry's position as well as that of the Congress. Indeed, in determining this issue the Executive branch was guided by the basic United States policy on this point which was set by Congress in 1976 when it decided not to treat the Trust Territory of the Pacific Islands as an area incorporated into the United States for purposes of the Fisheries Conservation and Management Act (P.L. 94-265). Every subsequent United States decision with respect to Micronesian maritime jurisdiction has flowed from and been consistent with that Congressional determination. These decisions include, for example, United States assent to a Trust Territory observer at the UN Law of the Sea Conferences, assent by the High Commissioner in laws originally enacted by the Congress of Micronesia regarding marine space, the exclusion of the Trust Territory of the Pacific Islands from the United States

Exclusive Economic Zone and United States assent to issuance of EEZ proclamations by the Micronesian Governments.

Thus, recognition of the foreign affairs authority of the Freely Associated States is consistent with the current political and legal status of the islands under the Trusteeship Agreement as well as the status they will have under the Compact. While this has made it inappropriate to require or expressly provide United States tuna fleet access to their waters, it is our view that the Compact provides a better framework for our fleet's operations in Micronesia than does the current state of law and policy under the Trusteeship Agreement. For once the Compact is in effect the United States will no longer be acting in the somewhat conflicting dual roles of Administering Authority and protector of the United States fishing fleet in Micronesian waters. Rather, we will be a partner in a bilateral relationship. While we foresee continuous cooperation and consultation in accordance with the Compact, we also believe the provisions of the FCMA and the Fisherman's Protective Act (P.L. 83-680) will be fully available to United States vessels.

It is important to note that the Compact does not constitute recognition or agreement by the United States to positions which may be taken from time to time by the Freely Associated States on the subject of maritime jurisdiction. Rather, it constitutes a recognition by the United States of the capacity of the Freely Associated States to conduct their foreign affairs in a manner consistent with the authority of the United States under the Compact for the defense and security of the area. Thus, if the Freely Associated States act on the basis of maritime claims not recognized by the United States, since the Compact contains no recognition of any specific maritime claims of the Freely Associated States, we believe that the protections of our laws will be available as stated above. I should note that this judgment is based on legal research and opinions of the Legal Advisor's Office of the Department of State.

The witnesses also expressed concern with respect to the provision of United States financial assistance under the Compact for the surveillance and enforcement by the Governments of the Marshall Islands and the Federated States of Micronesia of their respective maritime zones (Compact Section 216). Their concern is that the United States could end up supporting the surveillance and enforcement of laws (extended jurisdiction over tuna) which are in conflict with United States law and policy. I believe two points need to be made to place this concern in the proper context. First, at present and during the first several years after the effective date of the Compact of Free Association, nearly ninety percent of the operational funding of the Governments of Palau, the Marshall Islands and the Federated States of Micronesia will derive from United States assistance. Therefore, whether or not the Compact specifically allows that certain funding will be used for maritime zone surveillance and enforcement, the Freely Associated State Governments would be employing Compact funding for that purpose in any event. Second, as stated above, the Compact in no manner constitutes a United States recognition or acceptance of the extent and nature of any maritime zones asserted by the Freely Associated States.

Another point raised by the witnesses relates to the extension to the Freely Associated States of General Headnote 3(a) treatment. They have expressed concern about potential competition to the American tuna industry and to the effect this provision may have on the economies of United States Pacific territories, especially American Samoa. I should first state that the provisions of headnote 3(a) as they will apply to the Freely Associated States are precisely the same as they apply to the United States Territories, including valuation procedures, exceptions, Presidential exclusion determinations and, of course, the ultimate ability of Congress to withdraw the benefit to all recipients. There is, however, a significant difference in the duration of extension. As to the United States Territories, these benefits will extend until the United States Government otherwise provides. With respect to the Freely Associated States, these benefits apply for fifteen years, whereupon they expire unless extended by agreement of the United States

In the foregoing discussion, I have dwelt on the protections for the American tuna industry which are included in the Compact. I hope that the United States tuna industry will view Article IV of Title Two of the Compact (the headnote 3(a) extension) as an encouragement to American industry. This is precisely what was intended and American industry can and should benefit from these provisions.

In conclusion, we recognize the potential legal and political complications which surround these issues. We are fully aware of the potential problems which could arise. We do not minimize them, nor do we hold that these issues will not be a source of concern as we embark upon the new relationship defined by the Compact. But we firmly believe that the Compact effectively preserves the United States position on tuna, without prejudice to the position of the Freely Associated States with respect to the rest of the international community. And I want to assure the Committee that this government, acting consistently with the Compact and within the framework of free association, will not hesitate to use all of its influence and every legal recourse available to it to protect and promote American commercial interests, and the interests of our tuna industry particularly. This commitment derives from our awareness of the role which our tuna fleet plays in our domestic economy, our commercial relations with the international community and our viability as a maritime nation.

In closing, I would like to thank the Committee for the opportunity to submit these written statements for the record.

Sincerely,

Samuel B Thomsen, for

Fred M. Zeder, II
Ambassador

POST HEARING SUBMISSIONS BY
THE FEDERATED STATES OF MICRONESIA
TO THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
JULY 20, 1984

During the Committee's May 24, 1984 hearing on the Compact of Free Association, the FSM was invited to respond in writing to questions and issues raised by Senators and witnesses participating in the hearing. The Government of the Federated States of Micronesia appreciates this opportunity and responds, herein, to those questions raised by Senators McClure, Matsunaga and Murkowski and also to statements presented at the hearing by those witnesses who either opposed the Compact or expressed reservations or views about its application inconsistent with those held by the FSM.

Senator Matsunaga asked the FSM representatives to list specific needs not addressed sufficiently or at all in the Compact. We believe a priority need is to initiate at this time the process for transition from Trusteeship to Free Association. An orderly process would benefit from a cooperative effort between our governments. Our research indicates that in similar situations in the past, particularly where program assistance was to be terminated, a transition process which phased out United States activities over a period of time was utilized to the benefit of all parties. An orderly transition effort in this case will require that each government establish a transition committee and that these committees work cooperatively in developing and executing a smooth transition program. Key elements of such a program include funding for the transition committees, program funding for the transition period while pre-Compact programs and other assistance are phased out, and funding for technical assistance to assist the FSM Government in taking over those programs and operations that currently are administered and funded by the U.S.

An important additional element of this effort would be to assess the impact of the withdrawal of traditional grant and programmatic aid upon our Government's ability to develop and maintain our infrastructure and provide equivalents to the services and programs that have operated under the Trusteeship, particularly those related to health and education. This assessment should reveal the extent to which special transition assistance will be needed to equip our Government to initiate the Free Association relationship smoothely and effectively by providing, from the outset, the basic level of services to the people including maintenance of infrastructure. The assessment would be jointly prepared by the two governments and the results presented to the U.S. Congress for review.

Senator Murkowski asked that we describe the most difficult problem the people of the FSM face in the Free Association relationship. The FSM is about to enter into a relationship unique in international affairs. While we have attempted to craft the relationship to assure its success, the transition from Trusteeship to Free Association quite obviously presents many unknowns. To cite one problem as greater than all others is, therefore, difficult. For instance, we have great concern whether our government will possess resources initially sufficient to deliver the health and education related programs our people require. By our best estimates, a significant shortfall exists in this area. We are also looking closely at our infrastructure to determine its sufficiency to support the kind of economic development necessary if we are ever to lessen the financial burden on the U.S. While much has been done by the United States over the years, virtually no one suggests that a balanced system of infrastructure is currently in place.

In addition to the basic sufficency of infrastructure, there exists the equally serious question of the sufficiency of funds to maintain and operate what is in place. The concept embodied in the funding provisions of the Compact is that infrastructure will be left by the U.S. in good condition. That is clearly not the case as the date for termination of the Trusteeship draws near. If substantial operations funds have to be diverted to the repair and maintenance of dilapidated structures and equipment, the achievement of virtually every goal set by the Compact, including the stability of the relationship itself, would be placed in jeopardy from the outset.

Perhaps the best answer to Senator Murkowski's question is to describe our concern in terms of the remaining need for special initial funding to enable us from the start not only to service the basic needs of our people, but also to grasp social and economic development opportunities in the early years of the Compact, so that we might achieve enough momentum to assure sustained economic growth. We believe that the transition effort recommended in response to Senator Matsunaga's question is the best way to assure that no major obstacles stand in the way to successful social and economic development. While we are confident of our ability to govern effectively and wish to terminate the Trusteeship immediately, we are also realistic that we will require assistance to make the transition a smooth one.

Senator McClure, in a letter to President Nakayama, asked for clarification of Governor Moses' concerns relating to future U.S. military rights in the FSM. Governor Moses' statement to the Committee had two primary purposes. One was to place clearly on the record the State of Ponape's support for the Compact. This support was affirmed in a State Leadership Conference several weeks before the hearing. The other was to describe those concerns which had been expressed by the people and leaders of Ponape during the debate on the Compact. One of the major issues debated was the future military intentions of the U.S. under the Compact and the denial arrangement.

Governor Moses and many others have focused particular attention on the issue of military base rights. During the negotiations, the U.S. stated, repeatedly, it had no intention to establish military bases in FSM territory. Our government made it equally clear that it would not enter into a Compact containing advance committments to accept any land-based military installation. The Compact and denial arrangement memoralize the expressed intention of both governments. The U.S. neither requested nor received base rights (other than limited land use necessary for the civic action teams and the Coast Guard station on Yap) in the Compact or the Agreement Regarding Friendship, Cooperation and Mutual Security. Both agreements do recognize that the United States may request that base rights be provided. The FSM agreed to consider any such request, in good faith and would do so, but it has no obligation to grant it. The key to the provisions referenced by Governor Moses is that both governments must agree before a base can be established. This is, of course, in keeping with the sovereign status of each country.

The desire of all our people not to be involved in future military conflicts is well-known. Our islands and people suffered greatly during WWII. There is a widespread fear that any military presence in our territory increases the possibility of our again being involved in military conflict. We believe strongly that the military relationship negotiated in Title III of the Compact and in the denial arrangement provides the protection we desire.

During the course of testimony, particularly near the end of the day, witnesses appeared before the Committee who, although well-meaning, demonstrated a fundamental misunderstanding of the Compact and the role the FSM government and people played in its development. Their testimony seemed to imply that the Compact was imposed upon the FSM or that our people were led down a primrose path by an overpowering United States. These concerns are entirely unfounded. Our people and government, through their representatives, participated vigorously in the Compact negotiations. Indeed, the length of the negotiations, lasting more than 14 years, and the evolution of the document itself are the best testaments that the Compact was a negotiated, not an imposed document, and that the FSM agreed to each final provision only after a careful analysis based on a full understanding of its meaning.

Indeed, President Nakayama's statement to the Committee explained that Free Association was our choice of relationships and that we achieved in the negotiating process each fundamental objective established at the outset by our people. He stated:

> The basic principles of the relationship of Free Association embodied in the Compact, which is before you, are entirely consistent with the goals established overwhelmingly by the Micronesian people at the outset of our quest. A variety of options for our political future were discussed widely in Micronesia throughout the mid-1960's. Finally, in 1969, our Joint Committee on Future Political Status informed the United States that the Micronesian people wished to develop a relationship of free association with the United States, based on four fundamental principles; namely,
>
> (1) that sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government;
>
> (2) that the people of Micronesia possess the right of self-determination and may, therefore, choose independence or self-government in free association with any nation or organization of nations;
>
> (3) that the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or government plan at any time; and
>
> (4) that Free Association should be in the form of a revokable Compact terminable unilaterally by either party.
>
> The Compact before you is entirely consistent with each of those principles.

While we appreciate the concerns of those who only recently offer their advice and assistance on the outcome of the negotiations, we wish to assure them that we have not been naive about the process nor were we ignorant of the implications of our negotiations. The Compact was negotiated within the confines of a sound constitutional framework established by our people when we adopted a constitutional government. As President Nakayama also explained to the Committee, ours is a concensus society. We could not have moved forward without the agreement and, more importantly, the understanding of our leaders and people on the meaning of the Free Association relationship. Indeed, the overwhelming approval of the Compact by the Micronesian people in the plebiscite demonstrates the support for this new relationship.

We are ready to terminate the Trusteeship and embark upon self-government. We urge those who would "protect us" to take a more thorough look at our country and government. We believe they will be as comfortable as we, that the expeditious termination of the Trusteeship and entry into effect of the Compact of Free Association are both in the best interest of the FSM.

The U.S. Tuna Foundation and the American Tunaboat Association, in particular, raised a number of reservations about the Compact and its impact on the industry. In formulating a response, we could have addressed, one-by-one, the many ill-founded characterizations, assertions and requests for special treatment which, if granted, could undermine the FSM's sovereignty and nullify the FSM's previous approval of the Compact. Such a response, however, would merely place the FSM in the same posture chosen by the U.S. tuna industry, when the need and the opportunity is, instead, to map out the considerable common ground that exists.

For some years now, U.S. tuna interests have claimed a privileged and protected position in Micronesian waters. Often they see their position there in only the darkest hypothetical forms, shaped by their own worst experiences elsewhere. As a result, their desire for more than promises and assurance of good intentions from both our Governments is understandable. In fact, however, mutually rewarding and harmonious future relationships for the U.S. tuna industry in Micronesia will not be built upon promises, any more than they will be secured by confrontation or attempts to impose unnatural constraints over our emerging government. The only effective catalyst that will produce the conditions both parties desire is one that is obvious, but heretofore not given sufficient attention -- mutual self interest. The critical need of the U.S. tuna industry, to have a comfortable, secure and profitable working environment in the Western Pacific, fits perfectly with the FSM's critical need for development. Instead of engaging in debate over esoteric questions of international law, if the critics could turn to a more tangible resource -- the Compact -- and utilize the benefits it offers both the FSM and U.S. businessmen, the concerns felt by the U.S. tuna industry should be replaced by enthusiasm.

Of all U.S. business sectors, the tuna industry should be the strongest ally in urging early approval of the Compact. It is the only U.S. industry that depends upon the Western Pacific waters for its basic product. The Compact, in its tax and tariff provisions, creates a strong natural incentive for the FSM to look first toward U.S. businesses in seeking development. Those same provisions are an equally strong attraction to U.S. businesses to look to the FSM. Thus the incentive is present on both sides to explore joint working relationships that would give the U.S. tuna industry the assurances it seeks and would create resources for the industry and the FSM that do not now exist. Only in an atmosphere which promotes mutual interests will the concerns voiced by the tuna industry be resolved.

The Compact of Free Association was agreed to by the FSM Government and approved by our people because it establishes a close relationship of friendship and cooperation between our nations based on mutual respect. This new relationship is designed not only to promote a good working relationship between our Governments but also to encourage commerce and trade between our countries. Our government believes in the principles set forth in the Compact and intends to honor them. We encourage all others with an interest in the FSM and its resources also to recognize them and work with us to achieve the purposes of the Compact.

We hope that the tuna industry agrees that the time to begin working together is now. The longer time is spent in unproductive debate the more questions our people will ask concerning the U.S. tuna industry's willingness to work constructively with the FSM. We call on the U.S. tuna industry to recognize that the Compact offers all of us a unique opportunity and to join in the effort to secure early approval and implementation.

During Ambassador Zeder's testimony, an exchange occurred pertaining to the United States prerogative to determine unilaterally what activities of the FSM Government have military implications affecting the exercise of the denial responsibility. There appeared to be suggestions that the U.S. possesses an untrammeled right to cite military implications in any activity of the FSM government and to determine that such activity cease, "even if it is wrong" in finding that military implications exist.

In a letter dated May 25, 1984 to Chairman McClure, President Nakayama, in response to the discussions about the denial responsibility, set forth the FSM's understanding of the denial relationship. In his letter he recognized that a "deep interest in the effective maintenance of denial throughout the territory of the Federated States of Micronesia is widely shared."

President Nakayama's letter also made clear the FSM's desire that the denial agreement work effectively.

> In fact, it should not be overlooked that the Federated States of Micronesia Government itself is a co-participant in this arrangement and has no desire to see it operate other than with total effectiveness. Accordingly, we plan to extend our active cooperation in that regard in the knowledge that it requires the cooperation of both parties.

He went on to say, however, that any suggestion that the U.S. could make decisions in the military area irrespective of the FSM views would

> imply a disregard for provisions of the Compact which were crucial to our decision to join in the denial arrangement. I refer to Compact Sections 351 and 352. Section 351 provides a mechanism for dealing with disputes arising under the defense provisions of the Compact and related agreements. In the unlikely event that the United States at some point determines in error that some activity of the Federated States of Micronesia Government has military character, and should the Federated States of Micronesia Government in the exercise of its own responsibility determine a necessity to dispute such decision, we would proceed under Section 351 of the Compact.
>
> Thus, while in a most literal and technical sense, it is true that the Government of the United States has the final voice in these determinations, it is dangerously inaccurate to say that the Federated States of Micronesia Government is helpless in the face of arbitrary and unreasonable actions by the United States. At no point in the

negotiations was it ever suggested to us that the United States needs or desires to have such authority over the Federated States of Micronesia Government. Indeed, it would have been impossible for the Federated States of Micronesia to agree to anything so extreme and potentially destructive to our sovereignty.

The denial arrangement was debated and considered by the people of the Federated States of Micronesia with perhaps the most care of any document related to the Compact. We understand our obligations and intend to live up to them in good faith. The United States also has a similar responsibility of good faith which includes an explicit responsibility to show "due respect" for the integrity of the Federated States of Micronesia's governmental process. This duty is expressed very clearly in Compact Section 352.

We in the Federated States of Micronesia understand and support that the denial arrangement is expressed for an indefinite term, with a view toward a long and close association between our two countries. If our hopes in that regard are to be realized, both parties must work together in a spirit of mutual cooperation and respect.

We thank the Committee for the opportunity to answer its questions and clarify many issues raised during the hearings. We also look forward to expeditious action on the Compact in the Senate and Congress as a whole.

REPUBLIC OF THE MARSHALL ISLANDS
MAJURO, MARSHALL ISLANDS 96960 • CABLE: REPMAR

ADDITIONAL REMARKS
of
CHIEF SECRETARY OSCAR DE BRUM
GOVERNMENT OF THE REPUBLIC OF THE
MARSHALL ISLANDS
to the
UNITED STATES SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
in respect to
THE COMPACT OF FREE ASSOCIATION

Mr. Chairman and distinguished members of the United States Senate Committee on Energy and Natural Resources:

On behalf of President Amata Kabua and the government and the people of the Republic of the Marshall Islands, I would like to thank you for this opportunity to submit for the record additional remarks in respect to the 24 May 1984 hearing this Committee conducted on the Compact of Free Association. I also wish to express to you our gratitude for the most professional and efficient manner in which you and your staff conducted the hearing.

The Negotiation Process

Mr. Chairman, at the 24 May hearing, certain minority party witnesses from the Marshall Islands claimed that their views were not considered during the 14 year Compact negotiating process. This is not true.

From 1969 through 1973, Senator Silk of the opposition party represented the Marshall Islands in the status talks. We note that under Senator Silk's leadership, the Marshall Islands sought free association and rejected commonwealth. Further, under the leadership of President Amata Kabua, representatives of the peoples of Bikini, Enewetak, Rongelap, Utrik and Kwajalein were included within the Marshall Islands delegation during negotiating sessions which most directly affected them. As a result of their participation, the term of the Military Use and Operating Rights Agreement was reduced from 50 to 30 years and the Section 177 Agreement was restructured to provided additional compensation. We also note that at the invitation of President Kabua, Senator Carl Heine of the opposition party attended the Maui Round of Compact negotiations in October of 1981.

Throughout the negotiating process, whether under the leadership of opposition Senator Silk, or under the leadership of President Kabua, the views of the minority were considered. Where the minority view had merit it was incorporated into the Marshall Islands position. Furthermore, the minority party, which controls approximately one third of the seats in the Nitijela (our parliament), fully participated in the Nitijela's study and 20 to five approval of the Compact in September of

1983. The opposition party cannot, in good faith, claim that they did not have input into the Compact process.

Mr. Chairman, in any democracy it is the role of the minority to persuade the majority that their policies are correct and that they should be followed. In the absence of such persuasion, the minority must accept the fact that their job is not yet done, and that the majority has the authority and responsibility to go forward with the business of the nation. In the Marshall Islands, 77% of the registered voters cast their ballots in the Compact plebiscite. A 58% majority of those who voted chose free association with the United States. Now on behalf of all Marshallese this majority seeks expeditious approval and implementation of the Compact.

The Plebiscite Process

At the 24 May 1984 hearing, opposition Senators from the Marshall Islands claimed that the Compact plebiscite education program was not adequate, and that the plebiscite does not represent the free and informed choice of the people of the Marshall Islands. These claims are false. Let me share with you the words of the United Nations visiting mission that observed the Marshall Islands plebiscite (see the Report of the United Nations Visiting Mission to observe the Plebiscite in the Marshall Islands, Trust Territory of the Pacific Islands, September 1983, Trusteeship Council Official Records: Fifty-First

Session (May-June 1984) Supplement No. 2, a copy of which is attached to these remarks and by this reference made a part of them)--

1. "A lively political campaign accompanied the plebiscite. It was fought fairly; there was no violence; and everyone was able to express his or her view freely and openly."
2. "The political eduction programme was most impressive both in planning and in execution. Not only were the task force teams helped by some excellent written material, but the use of the radio, to which virtually everyone has access, was a particularly important feature. Care was taken to monitor the work of the teams and in particular to ensure that they did not advocate the acceptance of the Compact. We were particularly impressed by the success of the task force members in retaining a very high degree of impartiality. Largely as result of the work of the political education programme, the Marshallese were able to cast their votes with a knowledge of the major issues involved and with at least some idea of the alternative constitutional options."
3. "The alternative constitutional options did not excite much interest. Although care was taken in the political education programme to explain independence and commonwealth status, ... [Out of over 10,000 voters] only

474 chose independence and 404 commonwealth status."

4. "The polling arrangements were, in general, excellent. ... We were impressed by the care taken by polling officers to follow scrupulously the regulations so as to ensure a fair and secret ballot. Minor mistakes at a few polling stations, ..., did not affect significantly the excellent record of the polling officers or the results of the plebiscite."

5. "The counting and tabulating of the votes was done thoroughly and carefully."

6. "We shall all long remember the patient queues of people at Majuro and Kwajalein waiting sometimes for hours in the sun and sometimes late into the night to cast their votes. There could be no more eloquent testimony to the faith of such people in the democratic election process and their determination to play their part in it."

Mr. Chairman, we believe the conduct and the results of the plebiscite, and the increasing role we have played in the management of our governmental affairs, speak well for our political maturity and our readiness for self-government. As President Reagan said in his address to the people of the Marshall Islands in September of 1983: "Under the Trusteeship, we have come to know and respect you as members of our American family, and now as happens to all families, members grow up and leave home. I want you to know that we wish you all the best as you assume full responsibility for your domestic affairs and foreign relations, as you chart your own course for economic development, and as you take up your new status in the world as a sovereign nation. But you will always be family to us."

Overall Economic Development Plan

Mr. Chairman, in the 24 May hearings questions were asked about the overall economic development plan that the Marshall Islands will prepare pursuant to Section 211 of the Compact. As President Kabua stated in response to the questions, we are now completing such a plan with the assistance of United Nations experts, and that plan will provide for the continued development of our outer islands. We hope to have the plan completed within the next three to six months. Upon its completion, we will formally submitted the plan to the United States for concurrance pursuant to Section 211 of the Compact. Through our administrative and legislative approval process the views all our people, including those of the minority political party, shall be considered in the preparation of the development of the plan.

Although much has been said about economic development under the Compact, I would now like to focus on social development.

Social Development

Through the assistance of the United States Government, and particularly this Committee, we have in the past five years been able significantly to improve living conditions in the Marshall Islands. Nearly all the outer islands now have at least one airfield and regular air service. Such service provides to the outer islands a better flow of goods and services, and makes available more timely medical evacuations into Majuro and Kwajalein. In Ebeye, where nearly one fourth of the population resides, we have been able to construct a dock, a container yard and a warehouse facility. We have also been able to rehabilitate the water and the sewer systems and renovate the hospital and the power plant. In Majuro, where over one third of the population resides, a new power plant has been constructed, a new national hospital is near completion, construction of a sewer system is about to commence, an underground electrical line has been laid 19 miles to the far end of the island, construction of a fish processing plant is being planned and a cafetorium will soon be under construction for the high school. In both Majuro and Ebeye we now have satellite communications with the world.

Federally funded health and educational programs, such as the headstart program, the aging program and school lunch program, have also improved the quality of life of our people, particularly the health and education of our children.

Under the Compact, we will have the funds to continue many of these very necessary and important programs at current levels. Moreover, the Compact will provide the peoples of Bikini, Enewetak, Rongelap, Utrik and Kwajalein, with additional funds so that they may implement community programs such as supplemental feeding, agricultural maintenance, education, health, relocation, and island rehabilitation.

However, until the transition from trusteeship to free association is completed, we believe that it would be cost effect to continue certain United States federal programs rather than duplicate them. In this connection, we would respectfully request that your committee authorize continuation of federal programs currently available to the Marshall Islands for at least a three year transition period. During such a transition phase, we can together evaluate the needs of the Marshallese people and ascertain their continuing requirements, if any, for federal programs. Programs we see a continuing need for include those such as are currently available from the Public Health Service and the Legal Services Corporation.

Over the past five years we have also benefited greatly from technical assistance we have received from various federal agencies. This Committee has been a leader in authorizing such assistance, and for that we are grateful. We cannot, as you know, duplicate such programs and services without great expense. Accordingly, we respectfully request that pursuant to

Section 226 of the Compact, this Committee authorize the extension of technical assistance to the Marshall Islands under the Compact to meet the transition needs of our government, including technical assistance and training in financial management, medical referral management, program administration, and maintenance of infrastructure.

We are not asking for hand-outs that will foster dependency upon the United States, but for assistance to help us help ourselves.

Strategic Denial

In respect to statements made by administration witnesses at the 24 May hearing, we would like to state for the record that although the United States has under the Compact and the Mutual Security Agreement authority to foreclose access to or use of the Marshall Islands by military personnel or for the military purposes of any third country, such authority can only be exercised in good faith and subject to the provisions of the Compact, including but not limited to Section 311(c), Section 313, Section 351 and Section 352. This strategic denial option should not be exercised in an arbitrary or capricious fashion.

The Marshall Islands Exclusive Economic Zone

In respect to statements made at the 24 May hearing by two witnesses from the American tuna industry, let me state that provisions of the Compact which relate to the marine resource matters were carefully crafted. And although the Marshall Islands does now exercise, and intends in the future to exercise, jurisdiction over living resources within its 200 mile exclusive economic zone, it is the policy of the Marshall Islands to grant access within its exclusive economic zone to United States commercial fishermen on the basis of equitiable agreements. Further, it is the intent of our government to encourage the United States fishing industry to invest in the Marshall Islands on a joint venture basis, and by doing so take advantage of the Compact's tax and trade incentives through the export of Marshall Islands fish to the United States. We believe such tax and trade incentives will not harm the United States tuna industry or Unites States territories, but rather will provide the basis for real economic growth in the region.

Conclusion

Mr. Chairman, in mid-July the American Enterprise Institute for Public Policy Research will be issuing a report on the Marshall Islands plebiscite. We understand that the report will be very favorable and we would like to submit it for the record when it becomes available. We also have attached for submission into the record a copy of the Conclusions and Recommendations of the fifty-first session of the United Nations Trusteeship Council which --

- reiterates that free association is an option that is not incompatible with the Trusteeship Agreement, provided the populations concerned have freely accepted it; and

- endorses the visiting mission's conclusion that the plebiscite was run by the government of the Marshall Islands so as to ensure the free and fair expression of the wishes of the people.

Should you or other members of your committee require further comments from the Republic of the Marshall Islands in respect to the 24 May hearing or the Compact of Free Association, please so advise us.

Thank you and komoltata.

Oscar de Brum
Chief Secretary

REPORT OF THE UNITED NATIONS VISITING MISSION TO OBSERVE THE PLEBISCITE IN THE MARSHALL ISLANDS, TRUST TERRITORY OF THE PACIFIC ISLANDS, SEPTEMBER 1983

TRUSTEESHIP COUNCIL
OFFICIAL RECORDS: FIFTY-FIRST SESSION
(May-June 1984)

SUPPLEMENT No. 2

UNITED NATIONS
New York, 1984

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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10 April 1984

Sir,

I have the honour to transmit to you herewith, in accordance with Trusteeship Council resolution 2174 (S-XV) of 20 December 1982 and rule 98 of the rules of procedure of the Council, the report of the United Nations Visiting Mission to observe the plebiscite in the Marshall Islands, Trust Territory of the Pacific Islands, September 1983.

This report is subscribed to unanimously by all four members of the Visiting Mission.

Accept, Sir, the assurances of my highest consideration.

(Signed) John W. D. MARGETSON
Chairman of the United Nations
Visiting Mission to observe
the plebiscite in the Marshall
Islands, Trust Territory of the
Pacific Islands, September, 1983

His Excellency, Mr. Javier Pérez de Cuéllar
Secretary-General
United Nations
New York, N.Y. 10017

CHAPTER I

INTRODUCTION: TERMS OF REFERENCE AND COMPOSITION OF THE VISITING MISSION

1. In response to an invitation from the Government of the United States of America to observe plebiscites in the Trust Territory of the Pacific Islands, 1/ the Trusteeship Council adopted resolution 2174 (S-XV) on 20 December 1982 by 3 votes to 1. By that resolution, the Council decided to send a visiting mission of approximately two weeks duration to observe the plebiscite in the Marshall Islands. The Council further decided that the Mission should consist of not more than six members from the following countries: Fiji, France, Papua New Guinea and the United Kingdom of Great Britain and Northern Island. 2/

2. After the necessary consultations, the President of the Council informed the Secretary-General, by letter dated 25 July 1983, of the date of the plebiscite, 7 September 1983, and the composition of the Mission. Its members were:

Mr. John Margetson (United Kingdom) (Chairman)

Mr. Paul Poudade (France) (Vice-Chairman)

Mr. David Anggo (Papua New Guinea)

Mr. Muneshwar Sahadeo (Fiji)

3. The Mission was accompanied by the following staff members of the United Nations Secretariat: Mr. Girma Abebe, Principal Secretary; Ms. Neuza de Costa and Mr. Marcos Namashulua, Political Affairs Officers; Mrs. Angelica Malic, Administrative Officer and Secretary; and Miss Amsale Girma, Secretary.

4. The purpose of the Mission, as defined in resolution 2174 (S-XV), was to observe the plebiscite, including the campaign and polling arrangements, the casting of votes, the closure of voting, the counting of ballots and the declaration of results.

5. The main purpose of the plebiscite was to enable the people of the Marshall Islands to express their wishes on the compact of free association and a number of subsidiary agreements which had been signed by representatives of the Governments of the Administering Authority (the United States) and the Marshall Islands on 30 May 1982. 3/ Another purpose was to enable the people to indicate their preference for a future political status other than free association in the event of the compact of free association not being approved.

6. The Marshall Islands are scattered over an area of approximately 600 by 700 nautical miles. The main centres of population are Majuro Atoll (12,000) and Kwajalein Atoll (7,000). We decided, therefore, that after our initial talks in the capital, Majuro, we should divide into two teams, Mr. Margetson and Mr. Anggo remaining in Majuro and Mr. Poudade and Mr. Sahadeo going to Kwajalein Atoll. Each team was supported by United Nations Secretariat staff.

7. We had two main tasks: (a) to satisfy ourselves that the voting public understood the issues involved in the plebiscite; and (b) to satisfy ourselves that

the plebiscite was a fair one carried out in accordance with the relevant laws and regulations, ensuring, inter alia, the secrecy of the vote and the accuracy of the counting. These tasks were stated clearly in a broadcast by Mr. Margetson on arrival at Majuro (see annex I to the present report), which was translated into the local language and repeated many times over the radio.

8. We met as many people as possible in the short time available. They included a large number of ministers and officials from the executive and legislative branches of government. We also met many traditional leaders (Iroij) and many individual members of the public. By holding public meetings in as many places as possible, we tried to obtain as good a cross-section of public opinion as we could in the short time available. A list of some of the people we met, together with a list of public meetings we held, is to be found in annex II to the present report.

9. We made every effort to visit as many islands and atolls as possible. Time, geography and limited communications were our constraints. Nevertheless, by careful planning, by using planes and ships and through the unfailing assistance of the Marshallese Government, we managed at various stages in our stay to visit all atolls with a population of more than 1,000 (Majuro, Kwajalein, Arno, Jaluit and Ailinglapalap). We also managed to visit three of the four islands and atolls which, because of the problems of resettlement and radiation resulting from the nuclear testing programme, are of particular importance (Enewetak, Kili and Rongelap). 4/

10. Everywhere we went we were received with great kindness and courtesy. The co-operation of the Marshallese Government, the mayors and the traditional and community leaders was unfailing. We were greatly helped by discussion with members of the groups in favour of the compact and with those opposed to it. We would like to express our gratitude to all; and in particular to Mr. Amata Kabua, the President of the Marshall Islands, Ms. Carmen Bigler, Chairperson of the Commission on Political Education, and Mr. Shiro Riklon, Chief Electoral Officer.

11. Our special thanks must go to our Marshallese and United States escort officers, without whose help we could not possibly have completed our task.

12. Above all we would like to record our appreciation of the friendship and kindness of the people of the Marshall Islands. They made us welcome, talked to us openly and sincerely and made our work a pleasure. We thank them all and wish them good fortune.

CHAPTER II

POLITICAL EDUCATION

13. The object of the political education programme was to explain the compact of free association to the people of the Marshall Islands. It was therefore central to the success of the plebiscite. The compact is a long and complicated document. Together with its related agreements, it covers about 300 pages of typescript couched in legalistic language and with much cross-referencing. It deals with a wide range of subjects, many of which, given the general standard of education in the Marshall Islands, lie outside the normal experience and understanding of the majority of the people. The task of the political education programme was therefore the formidable one of creating an informed public opinion on the compact, and of ensuring that all voters understood the ballot paper and how to use it. Part two of the ballot paper (see annex III to the present report), asked about future political status in the event the compact was not approved. The programme of political education had, therefore, also to cover other constitutional options. It chose, on grounds of simplicity and realism, to confine the options to independence or commonwealth status, and did not deal with more remote possibilities such as the status of Territory or state of the United States.

14. The programme was funded by the United States Government from the $US 300,000 grant for the plebiscite. Political education probably accounted for about $US 200,000 of that sum. The programme was started in November 1982, but after a break from February to July 1983 it was continued at an intensive rate until 4 September 1983.

15. In our meetings with members of the Commission on Political Education and with members of the political education task force, we were impressed by the systematic and practical way in which the programme had been planned and executed, by the excellent quality of the written material and radio programmes and by the determination to present a difficult and sometimes dull subject in a lively and interesting manner.

16. The decision to use public meetings and radio as the main methods of communication reflected the culture of the Marshall Islands, which is based on the spoken rather than the written word. Twenty-four people from varying walks of life, including government employees, teachers and privately employed people, were recruited to form a task force and underwent two periods of intensive training. The task force was divided into eight teams of flexible size and sent to every large community in the Marshall Islands. A major effort was made in the large population centres; the smaller islands received less attention. In Ebeye, for example, with a population of about 7,000, a large team stayed for a week. In Majuro, meetings were held with members of the Nitijela (Legislature) and with employees of government departments, as well as with the general public. Public meetings were also held in the major Marshallese communities of mainland United States, Hawaii, the Federated States of Micronesia, Guam and Palau.

17. In the course of our public meetings, some people complained that they had been unable to attend the meetings organized by the task force teams and, in particular, that the meetings had sometimes been held during working hours. We are in no doubt, however, that the teams, for their part, had tried their best to reach as many people as possible, sometimes returning on several occasions to the same

place if the initial attendance had been meagre. According to the statistics compiled by the Commission on Political Education, some 4,500 people (about one third of the registered voters) attended 125 meetings with the task force teams. It was apparent from our discussions with members of the task force and the general public that many who attended such meetings were leading men and women, heads of families, community leaders and educated members of the community who were able to pass on their knowledge to others. The impact, direct and indirect, of the task force teams on the voting public was therefore impressive. To that must be added the impact of the radio programmes which were broadcast daily from 7 July until 5 September. We were impressed by the range, balance and highly informative nature of these programmes. Radios are owned by large numbers of Marshallese, and listening to them, particularly in the evening, forms an important part of Marshallese leisure. The potential of this means of political education was well utilized.

18. The written material of the political education programme was equally impressive. Although the compact of free association was translated into the Marshallese language, it is unlikely that it was read by many people. A long summary of the compact was issued for reference purposes to task force members and was also distributed to all members of the Nitijela. A short summary of the compact (see annex III to the present report) was, however, widely distributed (8,000 copies in Marshallese and 1,000 in English). This highlighted clearly and succinctly the major issues involved, and included a brief comparison between free association, independence and commonwealth status. Considerable use was also made of the local newspaper and the government newsletter both to publish articles on the compact and to explain the ballot paper and how to use it.

19. The education programme concentrated to some extent on three issues which were of great interest to particular sections of the Marshallese population. These were: (a) the Agreement between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association (commonly referred to as the Radiation Agreement or "177" - the section of the compact dealing with that subject); (b) the Agreement regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association (which we refer to simply as the Kwajalein Agreement); and (c) the status of commonwealth as a constitutional alternative to free association. Task Force members were specially trained to deal with these subjects at public meetings; radio programmes were devoted to them; and short summaries of the agreements on radiation and on Kwajalein, and a comparison between commonwealth status and the compact were distributed and also published in the local press (see annexes IV-VI to the present report). Another feature of the programme was the systematic way in which questions raised at public meetings, which task force members had found difficult to answer, were discussed on return to Majuro. The answers were then distributed to the task force teams and often featured in radio programmes dealing with questions of particular interest.

20. Explaining the compact to the public without advocating its acceptance was perhaps the hardest aspect of political education. It is significant that in our public meetings we received no complaints about lack of objectivity on the part of the task force teams. We were impressed by the careful briefing given to task force members on this aspect of their work and by the steps taken to ensure high standards in this regard. For instance, all public meetings were recorded and tapes played back at headquarters so that any sign of bias could be detected and

rectified in subsequent meetings. The success of the task force members in retaining a very high degree of impartiality is a matter on which we would like particularly to offer our congratulations.

21. In our meetings with the public we detected much apathy on the subject of the compact, together with a strong narrow interest by some communities in particular issues of concern only to them. Thus, at some meetings it proved very difficult to stimulate discussion on the compact at all, while at others, people directly concerned showed a great interest in, for example, the radiation agreement or the return of the Bikini people to their island. This was a difficult situation in which the programme of political education had to work, particularly as on some islands the people showed that they had already made up their minds, often on the basis of misleading or incorrect information, and did not wish to listen to the teams. The task force tried consistently to counter a too narrow focus of discussion. For instance, in Ebeye the task force held two meetings, one devoted exclusively to the radiation agreement, which was the more heavily attended, and the other covering all other aspects of the compact. More generally, the political education programme depended on an imaginative approach to the subject in order to overcome apathy.

22. As we have indicated, the programme was most impressive both in its planning and execution. It was, in our opinion, a notable feature, not only of the plebiscite in the Marshall Islands but also of all plebiscites held in other parts of the Trust Territory on the compact of free association. Although some people informed us that they did not understand the compact, we believe that, very largely as a result of the programme of political education, in general the people of the Marshall Islands were able to cast their votes on 7 September 1983 with a knowledge of the major issues involved and with at least some idea of the possible alternative constitutional options.

CHAPTER III

THE POLITICAL CAMPAIGN

23. The plebiscite gave rise to a lively and hard-fought political campaign. There were two main groups involved, one consisting of the Government and other elements which supported the compact; the other, a coalition of groups which opposed it.

24. The Government of the Marshall Islands, having negotiated the compact of free association with the United States over a period of some 14 years, campaigned strongly for its acceptance by the people. Other groups supporting the Government included the Kwajalein Independent Landowners ("Ten-Ten") who were opposed to the views of the Kwajalein Atoll Corporation. President Kabua himself campaigned in many of the islands, using among other things, his prowess on the electronic organ to attract large crowds. Use was made of radio and local newspapers; hand-painted notices enjoining people to vote "yes" were visible in Majuro; and a pro-compact rally was organized in Majuro on 5 September. In general, however, the pro-compact campaign was conducted mostly in the traditional way of meetings with communities.

25. The Government, or pro-compact, position was, in essence, simple: the Government had, after much effort, obtained in the compact a reasonable agreement and although it did not give everyone what they wanted, it nevertheless represented the best that could be obtained. The most sensible course for the Marshall Islands was, in the Government's opinion, to accept the compact and dispose of the burden of the Trusteeship status. Only by doing that could the Marshall Islands develop its relations with other countries and thereby, through trade and aid, fulfil its economic potential and take its place among the nations of the world.

26. The members of the pro-compact group told us that they had spent much time reacting to misrepresentation of the compact and to unfounded allegations about it. We ourselves were asked at public meetings if it were true that, if the compact were accepted, the United States could take all the land. It was remarkable that, despite the political education programme, such misunderstandings could persist. It made the campaign task of the pro-compact group a difficult one.

27. For the purpose of campaigning against approval of the compact, opposition elements formed a group known as the Coalition. As its name implies, it was comprised of several groups who opposed approval of the compact for a variety of reasons. Many of its members were not against the status of free association as such, but were strongly opposed to particular provisions of the compact and its related agreements. One large group was opposed to the radiation agreement (sect. 177 of the compact); many of them came from the islands primarily affected: Bikini, Enewetak, Rongelap and Utirik. Another major group, mostly members of the Kwajalein Atoll Corporation, was opposed to the Kwajalein agreement, including the scale of payments to the Kwajalein landowners. Yet another, but less significant, group, comprising members of the former Voice of the Marshalls Party, represented pro-Micronesian unity and pro-commonwealth status views.

28. A particularly interesting and important element in the Coalition was the lawyers for the Marshall Islands Atomic Testing Litigation Project (MIATLP). These United States lawyers were retained by very many Marshallese to pursue their claims in the United States courts for compensation in connection with the consequences of the 1946-1958 United States nuclear testing programme. They expressed strong views, not only on the inadequacy of compensation offered under the compact, but also particularly on the espousal clause in the agreement for the implementation of section 177 of the compact. Under this clause, all claims of the Government and

people of the Marshall Islands against the United States resulting from the nuclear testing programme would be settled in exchange for a $US 150 million fund. This would have the effect of ending all legal procedures against the United States in United States or Marshallese courts. They saw this as removing the important constitutional right of the Marshallese of access to the courts, and considered espousal to be unconstitutional in relation to both the United States and Marshallese constitutions. They also raised with us the question of whether the compact could override the Constitution of the Marshall Islands, a matter which they considered would probably have to be tested in the courts.

29. The Coalition, probably because of the leading part played by the MIATLP group, fought a campaign using many of the election techniques used in the United States. T-shirts and caps with suitable slogans were given away, printed posters and car stickers were much in evidence in Majuro and Ebeye, campaign leaflets were distributed and extensive use was made of advertisement space in the local newspapers. A sticker for use on the ballot paper in answer to the question in part two was widely distributed. This said:

> "A compact of free association should NOT include a 177 agreement. Radiation victims should be FREE to settle PRIVATELY or go to Court."

30. The political campaign centred on the two questions of compensation under section 177 of the compact and compensation for the Kwajalein Missile Range. Voters appeared to be faced with the decision of whether to settle for the amount offered in the compact and therefore vote "yes"; or to vote "no" in the hope of getting more in the courts - a difficult decision on which they were offered much conflicting advice. No other subject attracted comparable attention in the campaign, although in our public meetings we found some interest in the economic development programme after adoption of the compact. There appeared to be little interest in alternatives to the status of free association; in particular the issue of independence was hardly discussed, even by the Coalition. Many members of the Coalition seemed satisfied with the concept of free association but considered that the Government had not obtained in the compact the best possible terms.

31. Although the campaign highlighted two issues, it was apparent that those particular issues, although of great concern to people directly affected, were not of comparable interest to other voters. In the larger atolls of Majuro and Kwajalein, it was possible to get a somewhat exaggerated view of the importance of the campaign. The voters on many of the other islands, not concerned with the problems of "177" or the Kwajalein Missile Range, were less affected by the campaign. In fact, the very active campaigning of the Coalition appeared to influence some voters who would not benefit directly from compensation payments themselves to support the Government and vote "yes".

32. Some leading members of the Coalition brought to our attention the list of broadcasts scheduled for the last two days of the campaign, and claimed that they had not been allocated equal or equivalent prime time. We satisfied ourselves that this matter had been drawn to the personal attention of the Minister of the Interior, whose responsibility it appeared to be, and that he had taken some action in response to it.

33. From what we heard and saw, we conclude that the political campaign was fought in a fair and good humoured way. There were no incidents of violence. In our public meetings, we were able to verify that voters were not afraid to express their views freely and we received no complaints of interference by the Administering Authority. Both pro-compact and anti-compact groups encouraged all voters to use their constitutional right to take part in the plebiscite.

CHAPTER IV

THE POLL

34. Polling day was on 7 September 1983. In the course of the day, those members of our team in Majuro visited eight polling stations, three of which were mobile units, some on several occasions. Members of the team based in Kwajalein visited all polling stations on the atoll, with the exception of that at Carlos, paying particular attention to Ebeye which had the largest voting population of the atoll and which was considered a particularly sensitive political area. 5/ Two members also visited the atolls of Wotho, Rongelap and Ailinglapalap to observe polling there. Given the difficulty of communication and the size of our team, we observed as much of the polling as was physically possible. By concentrating our efforts largely on the two major population centres of Majuro and Kwajalein Atolls, we ensured that we covered the polling stations serving some 60 per cent of the population.

35. There have been many elections in the Marshall Islands, and arrangements for the plebiscite therefore followed previous well-proven practice. We will discuss later on the exceptions to this. Procedures in the plebiscite followed the Election Law, 1980, as amended, and the instructions issued by the Chief Electoral Officer.

36. There were 85 polling stations in the islands and one in the office of the Representative of the Marshall Islands in Honolulu. Each polling station was staffed by at least two duly appointed electoral officials. The vast majority of such officials had had previous experience and knew the regulations and procedures well. Correct equipment, stationery and well-made ballot boxes with secure locks were distributed to all polling stations in good time.

37. The security of the polling stations was ensured by the presence of a police officer at each station we visited. Government and opposition groups appointed poll-watchers for all important polling stations (Government for 37 and the opposition for 80). In the heavily populated islands of Majuro and Ebeye, all polling stations, except the mobile ones, had simple but effective plywood polling booths. This assured secrecy in voting. Elsewhere, and at the mobile stations, voters had to find some place with sufficient privacy in which to cast their votes. Although this was theoretically undesirable, we heard of no complaints arising from this practice.

38. In general, the polling stations were well run. Voters' names were checked against the electoral register, instruction on filling in the ballot paper was given when necessary, and completed ballot papers were deposited in locked ballot boxes. The same procedures were followed in the mobile polling stations, which have been used previously in the Marshall Islands and consist of electoral officials with all necessary polling equipment, accompanied by police officers and poll watchers, driving from house to house. The system seemed appropriate for atolls where the population was scattered thinly along a strip of land, or for scattered islands in an atoll with very small populations. It appeared to work well and it was an interesting feature of the plebiscite for observers such as ourselves.

39. In the course of observing the polling, we noticed a few irregularities. Although the polling stations opened promptly at 7 a.m. in Majuro, in Ebeye the polling booths were still being constructed at 7.45 a.m. and the polling station did not open until 8 a.m. Some polling stations in Majuro failed to exhibit specimen ballot papers as required; and some officers, both in Majuro and Ebeye, did not fully understand the correct use of the two envelopes which were required for absentee and same-day registration voters. 6/ The organization of the Ebeye and Majuro special voting status seemed unnecessarily complicated. Each absentee voter had to queue first to check that he was on the registration lists, to join another queue to obtain the ballot form, then to queue to have the affidavit witnessed and finally to queue to cast the vote in the polling booth.

40. A new feature of the polling procedure in the Marshall Islands was the setting up of a polling station in Kwajalein for Marshallese workers at the Kwajalein Missile Range. Arrangements there were very satisfactory and the poll was closed on time. Unfortunately, the same cannot be said for the polling stations on Ebeye and Majuro where very large numbers of absentee and same-day registration votes were cast. In Majuro, it had been decided to depart from previous practice and insist that all such voters should vote at a special polling station. This station was served by two teams of electoral officials who, even by 7.15 a.m. were unable to process the voters quickly enough to prevent a queue from forming. People queued for long periods throughout the day and as the evening and closing time for the polling station approached, queues of several hundred people formed. The same happened in Ebeye and it was not until midnight in Majuro and about 1.30 a.m. in Ebeye that all those who had gone to the polling stations by 7 p.m. finally finished casting their votes.

41. Throughout the day, we followed closely the situation in the two polling stations in Ebeye and Majuro. We were satisfied that although the arrangements were most unsatisfactory, in that hundreds of voters were required to wait for many hours, often in the sun, before casting their votes, nothing contrary to the electoral regulations appeared to have taken place. Care was taken to ensure that no one joined the queues after 7 p.m. and police officers were placed at the end of the queues at that time so as to ensure this. Some five people in Majuro attempted to join the queues shortly before midnight but were immediately discovered and asked to leave. It was apparent to us that the problems of the two polling stations derived from an absence of foresight. The situation could have been foreseen and an adequate number of electoral officers and polling booths apportioned to these stations. The patience of those queuing for so long in such conditions was indeed a remarkable testimony to the faith of the people in the democratic election process, and their determination to play their part in it.

CHAPTER V

THE COUNTING AND TABULATING OF VOTES

42. The counting and tabulating of all votes was centred at Majuro in an open building used by the Nitijela in full view of the public. Arrangements for bringing the ballot boxes to Majuro had been carefully planned. By using boats to carry the boxes to islands with landing strips, and by using aircraft to bring boxes to Majuro from all such islands with airports and landing strips. All boxes arrived at Majuro by 10 September.

43. Arrangements for the security of the boxes were also well planned. In general, the boxes were escorted by members of the police force. Before the counting started on 8 September, the Majuro boxes were kept overnight in the police station there, secured by lock and key. Thereafter, all boxes at Majuro were kept in the Nitijela, guarded by police officers and with people from the Government and Coalition sides keeping watch at night. With one exception, there were no complaints made to us about interference with the ballot boxes either in transit to Majuro or thereafter. The exception concerned the ballot box from the Long Island mobile polling station, which was not properly locked when handed to the Majuro police station for safe keeping on 8 September. There was no suggestion that the box had been tampered with.

44. The method of counting and tabulating the ballot papers was very thorough but time-consuming. Two counting committees were formed, each of four people. Both committees contained proponents and opponents of the compact. Each vote was checked by all four members of each committee. The counting started on 8 September, but by 10 September, when we had to leave, only approximately half the counting had been completed. A very experienced and senior member of the United Nations Secretariat was therefore left behind to observe the counting of the remaining votes. By the time she left on 15 September, only some 800 votes from the outer islands still remained to be counted.

45. One major reason for the extreme length of time taken to complete the counting and tabulating was the thoroughness with which absentee and same-day registration votes were checked. All such votes had to be accompanied by affidavits. The affidavits of absentee votes were checked carefully against the list of registered voters so as to ensure that the person voting was entitled to do so and had not done so twice. The affidavits of same-day registration votes were harder to check, but in cases where there was some doubt as to the age of the voter, the affidavits were checked against school and hospital records. By the time that we left, three such votes had been disqualified on grounds of age. It is worth emphasizing that, although we received no evidence at all to suggest that anyone had used the same-day registration procedure to cast a vote unlawfully, the system is such that it is impossible to check adequately against double voting. Although there are obvious advantages in same-day registration, which encourages many to vote who had not taken the trouble or who had been unable to register beforehand, it appears to us that the system is dangerously vulnerable to abuse.

46. The counting committees dealt with all problems in a careful and correct manner. In all difficult cases they consulted the Chief Electoral Officer, who when necessary, was advised by the Attorney General. Thus, "stickers" used in connection with part two of the ballot (expressing a preference for the compact without sect. 177, see para. 29) were allowed as votes and were duly counted. There were also problems which arose about the following four ballot boxes:

(a) At Enibuoj, the ballot papers had been placed in envelopes and it was not known if some of these were absentee votes requiring affidavits;

(b) At Likiep, the number of ballots (30) was higher than the number of registered voters;

(c) At Namu, parts one and two of all ballot papers (70) had been separated by cutting the ballot papers in half. Part two of the ballot papers had been placed in a separate envelope;

(d) At Rairok, some ballots and affidavits were mixed. It was also suggested that this box, from a mobile unit, had arrived well after the closing time of the ballot.

The total number of votes contained in the four boxes amounted to approximately 350. By 15 September, when the last member of the Mission had left, no decision had been taken about the contested boxes, although the matter was under discussion between the Chief Electoral Officer, the Attorney General, and members of the Government and Coalition groups.

47. Postal absentee ballot papers also presented some problems. Of 168 such votes, 70 were rejected - 18 because they had no affidavits attached; 38 because the affidavits had not been notarized (a requirement for absentee votes in United States territory); 7 because the envelopes containing the ballot paper were not sealed; and 7 for various other reasons. Subsequently, after our departure the number of rejected ballots was reduced to 32. It would appear that the unnotarized ballots were accepted.

48. Our general impression of the counting and tabulating was that it was very thorough and well conducted, but unnecessarily slow. The members of the counting and tabulating committees worked extremely hard and often far into the night. Two additional teams would have halved the time and enabled the results to have been announced several days earlier. The keenness of the two sides in the political campaign was such that every aspect of the counting and tabulating and the security of the boxes was observed closely by both sides. This helped to ensure that correct and fair practices were followed. The working atmosphere in the Nitijela building remained good-humoured throughout the many days of the counting. Members of the public were present at all times of the day and night to watch the counting and this itself testified eloquently to the interest in the plebiscite and its results.

CHAPTER VI

RESULTS OF THE PLEBISCITE

49. In a letter dated 23 January 1984, Mr. Shiro Riklon, the Chief Electoral Officer of the Marshall Islands communicated the results of the plebiscite to the Chairman of the Visiting Mission. The text of the letter is reproduced below:

> "By this letter I am formally transmitting to you the results of the plebiscite held on 7 September 1983 in respect to the compact of free association. Attached as enclosure No. 1* is a copy of the plebiscite results as certified by the Counting and Tabulation Committee to this office on 17 September 1983.
>
> "The counting and tabulation forms for each electoral district are attached as enclosure No. 2* and confirm the figures certified for part one of the plebiscite ballot. That is, 6,215 yes votes and 4,509 no votes, for a total of 10,724 votes cast in part one. In respect to part one, 34 ballots were left blank for a grand total of 10,758 valid ballots counted. The atoll by atoll results for part one are as follows:

Atoll	Yes votes	No votes	Per cent approval
Ailinglapalap	434	208	68
Ailuk	237	93	72
Arno	581	175	77
Aur	219	72	75
Ebon	104	370	22
Enewetak/Ujelang	185	63	75
Jabat	46	11	81
Jaluit	268	595	31
Bikini/Kili(Ejet)	65	241	21
Kwajalein	418	993	30
Lae	103	36	74
Lib	30	39	43
Likiep	274	95	74
Majuro	1 491	417	78
Maloelap	255	184	58
Mejit	210	47	82
Mili	182	306	37
Namorik	233	99	70
Namu	322	15	96
Rongelap	16	95	14
Ujae	110	25	81
Utirik	145	56	72
Woltho	44	16	73
Wotje	127	206	38
Absentee (overseas)	116	52	69
	6 215	4 509	58

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* The enclosures referred to in Mr. Riklon's letter are available for inspection in the secretariat of the Trusteeship Council.

"The counting and tabulation forms indicate that for part two the results are as follows:

"Part two of the ballot blank		7 602
"A relationship with the United States other than free association:		1 350
No comment	933	
Commonwealth	404	
Statehood	11	
Status quo	2	
"Sticker - compact of free association without a section 177 agreement		1 317
"Independence		474
"Communism		1
		10 744

"You will note that as to part two, the results originally certified by the Counting and Tabulation Committee differ from those obtained from their counting and tabulation forms. You will also note that upon reviewing the forms there were 14 more ballots counted for part one than part two. These differences are, as far as we can determine at this time, a result of errors in computation and tabulation by the Committee. To the best of my knowledge, the counting and tabulation forms represent the authoritative results of the plebiscite.

"If you have any questions as to the plebiscite results, this office would be pleased to assist you.

Sincerely,

Shiro RIKLON
Chief Electoral Officer"

CHAPTER VII

OBSERVATIONS

50. All arrangements for the plebiscite were made by the Government of the Marshall Islands. Although the Administering Authority funded the plebiscite, it appeared to play no part at all in it.

51. A lively political campaign accompanied the plebiscite. It was fought fairly; there was no violence; and everyone was able to express his or her view freely and openly.

52. The plebiscite was largely dominated by financial considerations. The political campaign highlighted two subjects: (a) compensation under the radiation agreement; and (b) the scale of payments to the Kwajalein landowners. In effect, the voters were being asked by the two sides in the campaign to decide whether or not the compact offered enough financial compensation. Many of those who felt that the compensation was inadequate did not appear to be against the compact as such; hence the widespread use of the stickers on part two of the ballot (see para. 29). The stickers stated that the compact should not include an agreement on compensation for radiation victims, who should be free to settle privately or go to court. Other aspects of the compact played little part in the campaign, although they were dealt with in the political education programme.

53. The political education programme was most impressive both in planning and in execution. Not only were the task force teams helped by some excellent written material, but the use of the radio to which virtually everyone has access, was a particularly important feature. Care was taken to monitor the work of the teams and in particular to ensure that they did not advocate the acceptance of the compact. We were particularly impressed by the success of the task force members in retaining a very high degree of impartiality. Largely as a result of the work of the political education programme, the Marshallees were able to cast their votes with a knowledge of the major issues involved and with at least some idea of the alternative constitutional options.

54. The alternative constitutional options did not excite much interest. Although care was taken in the political education programme to explain independence and commonwealth status, over 70 per cent of the voters did not fill in part two of the ballot. Only 474 chose independence and 404 commonwealth status, and 1,317 voters used the stickers on part two of the ballot.

55. The polling arrangements were, in general, excellent. The exceptions were the two polling stations on Majuro and Ebeye, which all absentee voters and same-day registration voters on those islands had to use. The large number of such voters had not been foreseen, and some people had to queue for as long as five hours to vote. The two polling stations did not finish their work until after midnight. Although this was unfortunate, it did not, as far as we could judge, discourage people from voting. We were impressed by the care taken by polling officers to follow scrupulously the regulations so as to ensure a fair and secret ballot. Minor mistakes at a few polling stations, particularly over the use of envelopes, did not affect significantly the excellent record of the polling officers or the results of the plebiscite.

56. The counting and tabulating of the votes was done thoroughly and carefully. Any difficulties encountered were dealt with in accordance with the electoral law. The keenness of the two sides in witnessing the counting ensured complete fairness and correctness of procedures. Unfortunately, the method of counting, whereby only two teams tackled the job and every vote was scrutinized by four people, made the process unduly long. Great care was taken in checking affidavits, but this also took up much time. Unfortunately, we had to leave Majuro after the third day of counting, when the task was only half completed. But a senior and experienced member of the United Nations Secretariat was left behind for a further five days, at the end of which only some 800 votes remained to be counted.

57. Although we found no evidence to suggest that anyone had taken advantage of same-day registration procedures to vote twice, we would like to emphasize that, without foolproof means of identifying voters, this procedure is open to abuse which is hard to detect.

58. The official results of the plebiscite were communicated to the Chairman of the Visiting Mission by Mr. Shiro Riklon, the Chief Electoral Officer, in a letter dated January 23 1984 (see chap. VI). Some 6,215 votes were cast for the compact and 4,509 against. Mr. Riklon's letter refers to some minor inconsistencies in the totals of votes counted for part one of the ballot compared with part two. We do not think these significantly affected the result. We conclude that the compact was approved by the voters of the Marshall Islands in a plebiscite which was run by the Government of the Marshall Islands so as to ensure the free and fair expression of the wishes of the people.

59. We shall all long remember the patient queues of people at Majuro and Kwajalein waiting sometimes for hours in the sun and sometimes late into the night to cast their votes. There could be no more eloquent testimony to the faith of such people in the democratic election process and their determination to play their part in it.

Notes

1/ Official Records of the Trusteeship Council, Fifteenth Special Session, Sessional Fascicle, annexes, document T/1845.

2/ Papua New Guinea and Fiji, as non-members of the Trusteeship Council, responded to the invitation of the Council to participate in the Visiting Mission.

3/ Compact of Free Association and Related Agreements between the Republic of the Marshall Islands and the United States of America (Committee on Political Education, Republic of the Marshall Islands, 1983).

4/ See Official Records of the Trusteeship Council, Fiftieth Session, Supplement No. 2 (T/1850), paras. 647-672.

5/ Ibid., paras. 695-701.

6/ An absentee voter is a registered voter who wishes to cast his or her vote in another electoral ward and a same-day registration voter is a person who is entitled to vote under the electoral law, but has not registered, or whose registration has been mislaid.

Annex I

STATEMENT BY MR. JOHN W. D. MARGETSON, CHAIRMAN OF THE VISITING MISSION, ON 31 AUGUST 1983

1. It is a very great pleasure for me and my colleagues to be in the Marshall Islands.

2. I should like to tell you why this visiting mission of the United Nations has come to the Marshall Islands.

3. Very many of you know the Charter of the United Nations. It is a long and complicated document. But there is one article in it (Article 76) which is of particular importance to the people of the Trust Territory of the Pacific Islands. This says that the objective of the Trusteeship System is to promote the political, economic, social and educational advancement of the inhabitants of the Trust Territories and their progressive development towards self-government or independence, as may be appropriate to the particular circumstances of each Territory and its peoples and the freely expressed wishes of the peoples concerned.

4. The United States, as the Administering Authority of the Trust Territory of the Pacific Islands, is entrusted with ensuring that these objectives are pursued. We have therefore come here because the United States Government, in November of last year, asked the United Nations to send missions to observe plebiscites, first in Palau, then in the Federated States of Micronesia and in the Marshall Islands. These plebiscites came about because, as you know, the United States Government had completed negotiations on the future political status with the three duly elected Governments of the Trust Territory of the Pacific Islands. And the plebiscites are being held to find out the wishes of the people on the future political status, in particular on the compact of free association.

5. As you know, Palau held its plebiscite in February and the Federated States of Micronesia held its plebiscite in June. United Nations missions went to both and observed them.

6. Now we are here for the plebiscite in the Marshall Islands. There are four of us; I am from the United Kingdom, Mr. Paul Poudade, our Vice-Chairman, is from France; Mr. Muneshwar Sahadeo is from Fiji; and Mr. David Anggo is from Papua New Guinea. I am particularly happy that two of our team come from Pacific countries, because these countries are neighbours of yours and understand well the problems of this part of the world.

7. We also have with us an experienced team of officers from the Secretariat of the United Nations under Mr. Girma Abebe, who has visited the Trust Territory many times and is known to many of you.

8. Now you may ask, "What exactly are we here to do?"

9. Well, first may I say what we are not here to do. The plebiscite is the responsibility of the Government of the Marshall Islands. They are organizing and running it. So we, the visiting mission, are not here to run the plebiscite or even help in running it.

10. We are here to see how the plebiscite is conducted and to write a report so as to tell the United Nations about it.

11. We must look to see whether the people of the Marshall Islands understand what the plebiscite is about, and understand what the questions are which they are being asked to answer in the ballot.

12. Then we must look at the polling arrangements, the counting of the votes and the declaration of the results, to see whether all these arrangements are fair and conform to the law which the Government of the Marshall Islands has passed to ensure absolute fairness of the plebiscite.

13. We must see whether all the voters, and that means all men and women who wish to vote, understand the issues in the plebiscite; and that all men and women have an opportunity to express their views freely in the plebiscite, or if they wish, not to vote at all.

14. We must see whether the ballot is secret and that no one at all can know how any individual votes.

15. I hope that the presence of the United Nations Mission here now, during the plebiscite and after the plebiscite, will help to make absolutely certain that all these conditions for a truly fair and democratic plebiscite will come about.

16. Now you may ask, "How are we going to do this?"

17. Well it is not easy, as there are very many islands and atolls involved. So we are going to split up into two teams. Two of us will go to Kwajalein, and two will remain in Majuro. These two teams will also travel to as many atolls and islands as possible and hold meetings with the leaders and citizens of those atolls and islands.

18. We have already met with President Amata Kabua. We will be having long discussions with Mr. Shiro Riklon, the Chief Electoral Officer, and with Mrs. Carmen Bigler and other officials responsible for the political education programme.

19. But what we really want to do is meet as many of you, the voters, as possible. We will hold meetings in as many places as we can before the plebiscite to hear what you have to say. We shall be available to meet as many groups as possible and to meet individuals who may wish to see us.

20. On polling day, we shall visit as many stations as possible to see how the voting is conducted. Then we shall witness the counting of the votes and tabulating of the ballots.

21. We shall be witnessing a very important step in the history of the Marshall Islands. It is an honour to do so. And it will be a great pleasure to see the people of the Marshall Islands deciding a matter of great importance through a democratic plebiscite.

Annex II

LIST OF PEOPLE MET AND MEETINGS HELD

A. People met at Majuro: Teams A and B

President and Cabinet

Mr. Amata Kabua, President

Mr. Atlan Anien, Speaker of the Nitijela (Legislature)

Mr. Kessai Note, Minister of Internal Affairs

Mr. Toke Sawej, Minister of Finance

Mr. Charlie Domnick, Minister of Public Works

Mr. Kunar Abner, Minister of Resources and Development

Mr. Rubon Zekraus, Minister of Internal Security

Mr. Jina Lavin, Minister of Social Services

Mr. Andrew Isaia, Minister of Health Services

Mr. Atjang Paul, Minister of Transportation and Communication

Mr. Shiro Riklon, Chief Electoral Officer

Ms. Carmen Bigler, Secretary of Internal Affairs and Chairperson of the Commission on Political Education

Mr. Philip Muller, Deputy Secretary of Foreign Affairs

Members of the Commission on Political Education

Ms. Carmen Bigler, Chairperson

Ms. Elizabeth A. Heine, Member

Mr. Abner Lomae, Member

Mr. Ninruj Abon, Member

Members of the political education programme task force

Mr. Timius Anien

Mr. Yawo Elanzo

Mr. Lawrence Edwards

Mr. Philip Kabua

Mr. Mothy Andrew

Mr. Jorelik Tibon

Mr. Jurelong Zedkeaia

Mr. Nang Nang

Ms. Cathy Nang

Mr. Annel N. Philimon

Mr. Kunio Lemari

Mr. Kiorong Sam

Ms. Bernice Joash

Ms. Glornia Harris

Mr. Hackney Wase

Mr. Rhine Brain

Ms. Ina Lomae

Mr. Miam Tarjohn

Mr. Boklong Anmontha

Mr. Wilbur Allen

Mr. Anthony Katlong

Mr. Andrew Bilimon

Mr. Paul Edwin

B. People met at Majuro: Team A

Traditional leaders

Iroij Kabua Kabua, Southern/Central part of the Ralik Chain

Iroij Bwijtak Laelan, Mili Atoll

Leiroj Adma Zedkaia, Majuro/Arno Atolls

Iroij Tomeing Eltera, Northern Atolls of the Ratak Chain

Iroij Botlang Loeak, Central/Southern Atoll of the Ralik Chain

Members of the Coalition Group who opposed approval of the compact

Mr. Richard Gerry

Senator Litokwa Tomeing

Senator Ataji Balos

Senator Carl Heine

Mrs. Biram Stege

C. People met at Laura, Kili, Arno, Jaluit and Ejit: Team A

Laura

Mr. Mikio Samuel, Mayor of Laura

Rev. Nashon Naisher, Minister of the Protestant Church, Laura

Kili

Tomaki Juda, Mayor

Mr. Henchi Balos, Senator (Nitijela)

Arno

Mr. Lavin Kattil, Mayor

Jaluit

Mr. Langling Alik, Chief Secretary's Representative

Mr. Ongra Anoka, Mayor

Ejit

Reverend Andrews

Mr. Henchi Balos, Senator (Nitijela)

D. People met at Ebeye, Third Island and Enewetak: Team B

Ebeye

Mr. Alvin Jacklick, Mayor of Kwajalein Atoll and Secretary of the Kwajalein Atoll Corporation

Mr. Ataji Balos, Senator, Member of the Kwajalein Atoll Corporation

Mr. Imada Kabua, Senator, Member of the Kwajalein Atoll Corporation

Mr. Damien Ishoda, Chief Secretary's Representative

Mr. Sato Maie, Chairman of the Kwajalein Independent Landowners (Ten-Ten)

Mr. Steve Muller, Ministry of Foreign Affairs, Government of the Marshall Islands

Third Island

Mr. Anrijel Anitak, Councilman

Mr. Rubon Lokon, Landowner

Mr. Akios Anitak, Health Assistant

Enewetak

Mr. Masao Lucus, Magistrate

Mr. Ishmael John, Senator (Nitijela)

E. Meetings held

Teams A and B

Meeting with the President of the Marshall Islands, the Speaker of the Nitijela and ministers and senior officials

Meeting with members of the Commission on Political Education

Meeting with members of the political education task force

Meeting with the Chief Electoral Officer

Team A

Meeting with traditional leaders at Majuro

Meeting at Majuro with members of the Coalition

Meetings with community leaders and the general public at Rita (Majuro), the Majuro Court House, Arno, Jaluit, Ejit and Laura.

Team B

Meeting with community leaders and the general public at Enewetak, Ebeye, Third Island and Roi-Namur.

Meeting with the Marshall Islands Government liaison personnel at Kwajalein

Meeting with the Mayor of Kwajalein Atoll and the Secretary of the Kwajalein Atoll Corporation at Kwajalein

Meeting with representatives of the Kwajalein Independent Landowners (Ten-Ten) at Ebeye

Annex III*

SUMMARY OF THE COMPACT OF FREE ASSOCIATION

I. The compact is about three things:

(a) Political - The Trusteeship will end and the Marshallese people acting through their own electoral leaders will become self-governing.

(b) Economic - The United States will give the Marshall Islands most of the money it should need for the next 15 years.

(c) Military - The Marshallese will agree to let the United States continue to be in charge of military affairs.

Most parts of the compact end in 15 years and will have to be renegotiated.

II. Military

(a) The United States has full authority and responsibility for defence and security matters in Micronesia which includes:

Duty	Rights
Defend the Marshall Islands (until mutually terminated)	(i) Denial - The United States has the right to prevent any other country from using the Marshall Islands for military reasons (until mutually terminated)
	(ii) Bases - The United States has the right to use and operate the Kwajalein Missile Range for 15 or 30 years depending on its desires.
	(iii) Access - In carrying out its military responsibility, the United States military, including its people, equipment and weapons, can pass through the Marshall Islands in ships and planes. In passing through the Marshall Islands American warships and warplanes could be carrying nuclear weapons.

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* The text of the annex was written and distributed by the Commission on Political Education.

(b) The Marshall Islands will avoid activities determined by the United States to be incompatible with United States Defense authority. However, there are some safeguards to prevent the United States from using its authority in a way which might hurt the Marshall Islands such as: environmental standards, prohibition on nuclear testing, additional land for military bases cannot be taken without permission of the Marshall Islands, and the Marshallese can appeal directly and personally to the United States Secretary of Defense and/or the United States Secretary of State for a change in United States military policy.

III. Economic

(a) During the first 15 years of the compact, the Marshall Islands will receive money for the following categories:

		(Millions of US dollars)
General grants		$230.0
Current	138	
Capital	92	
Block grants		45.0
Specified grants		35.5
Energy	28.0	
Communications	7.5	
Kwajalein related		135.0
Landowners	92.4	
Development authority	42.6	
Radiation (177)		270.0
Total		715.5

There is also a joint fund of $92 million to be shared among Palau, the Federated States of Micronesia and the Marshall Islands for scholarships ($45 million), ocean surveillance ($17 million), and health and medical programmes such as referrals ($30 million).

(b) For each year of the compact, the Marshall Islands will receive the following amounts (in millions of United States dollars):

Year	General		Block	Specified		Kwajalein	Radiation (177)	Total
	Current	Capital		Energy	Communications			
1	11.4	7.6	3.0	-	3.3	9.0	18.0	52.3
2	11.4	7.6	3.0	2.0	0.3	9.0	18.0	51.3
3	11.4	7.6	3.0	2.0	0.3	9.0	18.0	51.3
4	11.4	7.6	3.0	2.0	0.3	9.0	18.0	51.3
5	11.4	7.6	3.0	2.0	0.3	9.0	18.0	51.3
6	9.0	6.0	3.0	2.0	0.3	9.0	18.0	47.3
7	9.0	6.0	3.0	2.0	0.3	9.0	18.0	47.3
8	9.0	6.0	3.0	2.0	0.3	9.0	18.0	47.3
9	9.0	6.0	3.0	2.0	0.3	9.0	18.0	47.3
10	9.0	6.0	3.0	2.0	0.3	9.0	18.0	47.3
11	7.2	4.8	3.0	2.0	0.3	9.0	18.0	44.3
12	7.2	4.8	3.0	2.0	0.3	9.0	18.0	44.3
13	7.2	4.8	3.0	2.0	0.3	9.0	18.0	44.3
14	7.2	4.8	3.0	2.0	0.3	9.0	18.0	44.3
15	7.2	4.8	3.0	2.0	0.3	9.0	18.0	44.3
	138.0	92.0	45.0	28.0	7.5	135.0	270.0	715.5

It should be noted that all of the general and specified grants plus most of the Kwajalein-related payments will be partially adjusted for inflation.

(c) The compact also provides a few federal programmes such as postal, weather, aviation, communications and disaster assistance.

(d) Although the compact provides more money than the Marshall Islands now receive under Trusteeship, over the next 15 years compact money will be reduced to help the Marshall Islands become more self-reliant and limit future United States expenditures. To make up for a lower level of aid in the future, the compact provides other ways for Marshallese to earn money such as:

(i) Local economic development, trade and tax benefits, money for infrastructure and development projects and development plan.

(ii) Foreign affairs. The United States recognizes and supports the right of the Marshallese Government to negotiate fishing agreements and other economic assistance from foreign countries like Japan and the United Kingdom.

(iii) Kwajalein Missile Range. The Marshallese will continue to get jobs and tax revenues from the Range.

(iv) Free legal immigration to the United States. The Marshallese can go to the United States in search of jobs and stay as long as they want. While in the United States, they will be able to pay lower Marshallese taxes on their earnings rather than United States taxes. Also Marshallese can join the armed forces of the United States.

(v) Additional United States assistance. In its annual report to the United States President and Congress, the Marshall Islands Government will outline the achievements of its development plans and can seek additional assistance should there be exceptional, economically adverse circumstances.

IV. Political

(a) The Marshall Islands Government operates under its own constitution and runs its own domestic affairs.

(b) The Marshall Islands Government also conducts its own foreign affairs.

(c) However, under the compact, the United States Government is in charge of all military affairs.

V. Differences between commonwealth, free association and independence:

	Commonwealth	Free Association	Independence
Political	Micronesia has local government but is under the constitution and laws of the United States. Marshallese become United States citizens. Probably part of United States forever.	Micronesia is self-governing according to its own Constitution, but the United States is in charge of all military affairs. Can become independent or commonwealth or stay the same in the future.	Micronesia is completely self-governing according to its own Constitution. Probably forever.
Economic	Micronesia becomes part of the United States economy. Probability of higher levels of United States assistance.	The United States provides Micronesia with most of the money it needs for government operations, social services and development.	Micronesia will probably receive less money. However, the United States will give some assistance, especially for development.
Military	The United States has full defence authority and responsibility forever, including the right to take land if needed.	The United States has full defence authority and responsibility. Cannot take additional land for bases without permission. Almost all defence rights except denial is limited to definite time lengths.	Micronesia is responsible for its defence. But since the Trusteeship cannot end without United States permission it is doubtful that the United States would allow the Marshall Islands to become independent without having much the same military authority it has under free association.

VI. The Ballot

The tentative ballot for the 7 September plebiscite will ask the following questions:

PART ONE

DO YOU APPROVE THE COMPACT OF FREE ASSOCIATION AND RELATED AGREEMENT?

☐ Yes

☐ No

PART TWO

If the compact of free association is not approved, I recommend to the Government that it negotiate an agreement with the Government of the United States consistent with my preference for the following political status.

☐ INDEPENDENCE

☐ A RELATIONSHIP WITH THE UNITED STATES OTHER THAN FREE ASSOCIATION

YOU MAY DESCRIBE THAT STATUS:

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NOTICE TO VOTERS REGARDING IMPLEMENTATION OF THE COMPACT OF FREE ASSOCIATION WITH THE UNITED STATES

Pursuant to article XIII, section 6, of the Constitution, the Nitijela has enacted the Plebiscite (Compact of Free Association) Act, 1983. Approval of the compact by a majority of votes cast in the plebiscite on the compact shall constitute approval of section 4 (1) of the Plebiscite (Compact of Free Association) Act. By approval of section 4 (1) of the Act, the compact and its related agreements become law, notwithstanding anything in the Constitution or any other law. A vote on the compact shall be a vote on section 4 (1) of the Act.

Annex IV*

DESCRIPTION OF THE NEW AGREEMENT ON RADIATION COMPENSATION (177)

1. The new agreement on radiation compensation represents three major improvements while still containing one major controversial point: (a) the value of payments to the people adversely affected by the nuclear testing programme of the United States of America would be substantially increased; (b) there would be more safeguards to prevent mismanagement and misuse of the funds; and (c) provisions would be made for trust funds designed to provide a long-term source of income for the affected people.

2. The agreement still, however, would represent the full settlement of all past, present and future claims of the people of the Marshall Islands resulting from the nuclear testing programme. That is, the claims of the people would be espoused by the Government. As a result, the Marshallese would not have access to United States courts in the future to seek damages from the United States nuclear testing programme unless the espousal provisions failed to be upheld by the United States courts. The United States insists upon the espousal of claims and has stated there cannot be a compact of free association for the Marshall Islands without a radiation agreement (177) that includes espousal. To compensate for this hard stand, the agreement allows the Marshall Islands Government to seek additional compensation for the victims of the United States nuclear testing programme from the United States Congress should there be a serious change of circumstances in the future.

New agreement

3. In the original agreement, the United States would have paid out roughly $150 million over a 15-year period. In the new agreement, the United States would instead pay out $150 million at the beginning of free association. This money would be used to create a fund to be invested and managed by an established United States investment management company. One leading New York investment firm has stated that it is prepared to guarantee annual proceeds of $18 million for the first 15 years of the fund. This would amount to total payments of $270 million for the first 15 years of the fund - a significant improvement over the original $150 million.

4. To ensure the integrity of the fund and its earnings, it would be managed by a private United States investment firm. All payments from the fund would be made directly from the investment firm to the affected party. For the people of Bikini, Enewetak, Rongelap and Utirik, the investment firm would send their payments directly to their local government council. Each local government council could distribute, invest or otherwise use their payments. However, each local government council would have to make a yearly public notification which would include a list of the names of all individuals receiving payments and the amounts received and state the amounts disbursed for every other purpose.

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5. For uncompensated radiation-affected people, including any additional claims by the people of Bikini, Enewetak, Rongelap and Utirik, the investment firm would send their payments directly to the Claims Tribunal. The Claims Tribunal is an independent arm of the Marshall Islands Government, which would receive its operating funds directly from the fund. The Claims Tribunal would be the final judge of all past, present and future claims related to the United States nuclear testing programme. Members of the Claims Tribunal would be persons qualified by education, experience and character serving for a set term of at least three years. Members could be removed from office only on the grounds of clear failure or inability to discharge their duties or for the commission of such high crimes as treason or bribery. By legislation, the Claims Tribunal could be established to pay claims on a nearly automatic basis. For example, any Marshallese with a thyroid condition could be presumed to have a valid claim.

Distribution of annual payments

6. No payments could be made from the original $150 million fund unless it was needed to pay out the guaranteed payments described below. Fortunately, one established New York investment firm would be willing to provide the needed annual payments with a guarantee that the original $150 million fund would not be touched. Most of these guaranteed payments would be used to compensate the following groups for the loss or damage to property and person arising out of the United States nuclear testing programme.

(a) Uncompensated claims and radiological survey to cover other uncompensated claims, including any additional claims from Bikini, Enewetak, Rongelap and Utirik, and the cost of a radiological survey, the fund would pay out $3.25 million each year during the next 15 years for a total of $48.75 million. Some $3.0 million of this total would be for medical surveillance and radiological monitoring. The results of such surveillance and monitoring would be given to the Claims Tribunal for its use. The remaining $45.75 million would be for the whole or partial payment of monetary awards made by the Claims Tribunal. Again, by legislation, the Claims Tribunal could be established to pay claims on a nearly automatic basis. For example, any Marshallese with a thyroid condition could be presumed to have a valid claim.

(b) Bikini. The people of Bikini would receive $1.25 million every three months during the next 15 years for a total of $75 million. The people of Bikini would use slightly more than half of their payments to create a trust fund to provide them with a long-term, hopefully perpetual, source of income. They would distribute the rest of their quarterly payments.

(c) Enewetak. The people of Enewetak would receive $812,500 every three months during the next 15 years for a total of $48.75 million. The people of Enewetak might decide to give their payments to a United States financial institution in return for a lump sum of about $25 million. They would distribute this money as follows: $10 million for payment of claims; $10 million to be invested in a trust fund as a long-term source of income; and $5 million to be invested in another trust fund to provide income to continue agricultural maintenance and food supplemental programmes.

(d) Rongelap. The people of Rongelap would receive $625,000 every three months during the next 15 years for a total of $37.5 million. So far, the people of Rongelap have not decided how to create a trust fund to provide a long-term source of income.

(e) Utirik. The people of Utirik would receive $375,000 every three months during the next 15 years for a total of $22.5 million. So far the people of Utirik have not decided how to create a trust fund to provide a long-term source of income.

7. The remaining guaranteed payments are for the following expenses:

(a) Claims Tribunal. Some $500,000 annually would be used to establish and operate the Claims Tribunal. These payments would be made as long as the Claims Tribunal was in existence.

(b) Health care. The Government of the Marshall Islands would receive $2 million annually during the next 15 years for a total of $30 million to obtain United States technical assistance to continue and expand health care services and programmes directly related to the consequences of the United States nuclear testing programme. Currently these services from the United States are worth about $1 million annually.

8. The United States continues to reaffirm its commitment to providing additional funds for the resettlement of Bikini Atoll at a time which cannot now be determined. Also, the people of Enewetak could obtain technical assistance from the United States to continue existing planting and agricultural maintenance programmes. The people of Bikini and Enewetak could obtain similar assistance to continue existing food programmes. The agreement would also transfer ownership of sunken vessels and cables in Bikini lagoon and cables in Enewetak lagoon to the people of Bikini and Enewetak.

After 15 years

9. After 15 years, the people of Bikini, Enewetak, Rongelap and Utirik would have trust funds to ensure a long-term source of income. Also the original $150 million fund would be intact. Up to 75 per cent of the fund's earnings after 15 years would have to be made available to the Claims Tribunal to pay uncompensated claims, if any. The Claims Tribunal would have a long-term source of income to make monetary awards. The remaining fund earnings after 15 years would go to the Government of the Marshall Islands, which could use these earnings in a way related to the needs resulting from the United States nuclear testing programme or the earnings could be reinvested.

10. To summarize, the new radiation agreement still states that it represents a settlement of all claims espousal. On the other hand, the agreement has been improved by providing more safeguards to prevent the misuse and mismanagement of funds, by increasing the value of the payments, and by creating trust funds designed to provide a long-term source of income for the Marshallese adversely affected by the United States nuclear testing programme.

Table 1

Radiation agreement (177): comparison of total 15 year funding between the new and old agreements

(Millions of US dollars)

	Old 177	New 177
Compensation and Programmes		
Bikini	34.6	75.00
Enewetak	24.1	48.75
Rongelap	15.0	37.50
Utirik	10.0	22.50
Uncompensated claims and radiological survey	34.0	48.75
Other Payments		
Establish and operate Tribunal	-	7.50
Health care	30.3	30.00
	148.0	270.00

Table 2

Annual payments under the new 177 agreement

(Millions of US dollars)

Year	Bikini	Enewetak	Rongelap	Utirik	Other claims and radiological survey	Establish and operate Tribunal	Health care	Total
1	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
2	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
3	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
4	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
5	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
6	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
7	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
8	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
9	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
10	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
11	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
12	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
13	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
14	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
15	5.0	3.25	2.5	1.5	3.25	0.5	2.0	18.0
	75.0	48.75	37.5	22.5	48.75	7.5	30.0	270.0

Table 3

Annual payments under the old 177 agreement

(Millions of US dollars)

Year	Bikini	Enewetak	Rongelap	Utirik	Other claims and radiological survey	Health care	Total
1	13.1	8.9	7.5	5.0	34	4.3	72.8
2	11.5	8.8	1.5	1.0	-	4.0	26.8
3	2.5	1.6	1.5	1.0	-	4.0	10.6
4	2.5	1.6	1.5	1.0	-	4.0	10.6
5	2.5	1.6	1.5	1.0	-	4.0	10.6
6	2.5	1.6	1.5	1.0	-	1.0	7.6
7	-	-	-	-	-	1.0	1.0
8	-	-	-	-	-	1.0	1.0
9	-	-	-	-	-	1.0	1.0
10	-	-	-	-	-	1.0	1.0
11	-	-	-	-	-	1.0	1.0
12	-	-	-	-	-	1.0	1.0
13	-	-	-	-	-	1.0	1.0
14	-	-	-	-	-	1.0	1.0
15	-	-				1.0	1.0
	34.6	24.1	15.0	10.0	34	30.3	148.0

Annex V*

MILITARY USE OF THE MARSHALL ISLANDS

1. In the Marshall Islands, what land has been negotiated for the defence sites? (see annexes A and B, art. III of the military use agreement)

Basically, the United States would have Kwajalein Atoll, specifically the islands of Kwajalein, Roi-Namur, Ennugarret and Ennylabegan (Carlos) outside the mid-atoll corridor and Meck, Enewetak, Omelak, Gellinam, Gagan, Illeginni and Legan within the mid-atoll corridor. Within the mid-atoll corridor, the United States would control entry and movement of people.

2. If, in the future, the United States decided it needed additional land for a military base, could it take it? (see sect. 321 of the compact)

No, the United States could only use the land it has already negotiated for in this separate defence site agreement. In the future, the United States could request more land but the Marshall Islands Government can say no.

3. How long would the United States have the right to use Kwajalein Atoll before it had to get Marshallese permission again? (see art. X, para. 3, of the military use agreement)

For 15 years, and then for an additional 15 years if it wants. So, the United States could use Kwajalein for 30 years before it needed to ask permission again.

4. Why is Kwajalein important to the United States?

It is needed to test the accuracy of United States missiles. These missiles are launched from Wanderberg Air Force Base in California and travel roughly 4,200 miles to Kwajalein. The United States needs to test its missiles so that it can be sure that it could attack the Soviet Union with nuclear weapons. The hope is that if the Russians know that the Americans can destroy them with nuclear weapons, then the Russians will be afraid to attack the Americans with nuclear weapons; maybe then there will be enough time to talk both sides into getting rid of some or all of their nuclear weapons.

Kwajalein Missile Range is the most important military area in Micronesia. However, it is very difficult to judge how important. Some people feel that although the Kwajalein Missile Range is important, it has limitations. They say that the United States could land missiles in the open ocean if it had to. This is the way the Russians test their missiles. Furthermore, some believe Kwajalein is too close to the United States and that the target site should be 6,000 miles away from California, like the Mariana Islands.

On the other hand, there are people who feel that Kwajalein is extremely important and that the United States would not give it up. They feel that it would be too expensive for Americans to move. They also feel that the physical characteristics of Kwajalein lagoon could not be replaced by any other place in the world.

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* The text of the annex was written and distributed by the Commission on Political Education.

Obviously, no one knows for sure how important Kwajalein is to the Americans and how much the Americans would be willing to pay for it before they would begin to think about leaving.

5. Why is Kwajalein important to the Marshallese?

Mainly because of its economic benefits.

6. What are these economic benefits?

(a) Tax revenue (see art. V, para. 1 (c) of the status of forces agreement). United States contract personnel are subject to local Marshallese income tax of 5 per cent . This represents an increase from the present 3 per cent income tax. In 1983, this tax revenue equalled approximately $1.4 million. If United States contract personnel had been paying 5 per cent, tax revenue would have been approximately $2.3 million.

(b) Employment (see art. VIII of the military use agreement). Local Marshallese would continue to be hired at United States wage scales. Currently, the Kwajalein Missile Range employs approximately 500 Marshallese.

(c) Direct payments (see land use agreement between the Kwajalein Atoll Corporation and the Marshall Islands; sect. 211 (a) (2) and 213 (b) of the compact; Interim Use Agreement, 1981-1982; Interim Use Agreement, 1982-1985; and art. X of the military use agreement):

(i) Option payment. The United States would pay $6.5 million ($2.0 million in 1983, $2.0 million in 1984 and $2.5 million 15 years after the compact takes effect). This option payment would be made for the right to continue to use Kwajalein for 15 years after the term of the compact. All of this money, with the possible exception of $1 million in 1984, would be given to the Kwajalein landowners. The $1 million in 1984 could be used for the Kwajalein Atoll Development Authority.

(ii) Development funds. The United States would pay $6 million ($2 million in 1984 and $4 million in 1985) to improve living conditions on Ebeye and develop living areas on other available islands in the Kwajalein Atoll. This money would be used to implement a Kwajalein Atoll development plan developed by the Kwajalein people.

(iii) Inflation adjusted payments. (See sect. 211 (a) of the compact.) Out of the general funds which the United States paid to the Marshall Islands, $7.1 million annually, adjusted for inflation, would go to Kwajalein Atoll. Some 60 per cent would be for the Kwajalein landowners while the remaining 40 per cent would be for the Kwajalein Atoll Development Authority. Should the Americans decide to extend their use of Kwajalein for another 15 years then all of the $7.1 million annual payment would go to the landowners. Under the present Interim Use Agreement the inflation adjusted payment is only for $5,164,000 annually.

(iv) Fixed payments. The United States would pay a fixed sum of $1.9 million annually not adjusted for inflation. All of these payments would go to the Kwajalein landowners. Should the United States decide to extend its use of Kwajalein for another 15 years then these payments would go to the Kwajalein Atoll Development Authority. Under the present Interim Use Agreement, the fixed payment is the same, $1.9 million annually, and will go to the Kwajalein Atoll Development Authority.

7. Which would pay more money, the Interim Use Agreements or the compact?

If the present Interim Use Agreement were simply extended for the length of the compact (15 years), then the compact would pay roughly $30 million more over the 15 years than would the Interim Use Agreement. However, the Interim Use Agreement would have to be renegotiated every several years. No one knows for sure whether these negotiations would produce more or less than the extra $30 million the compact would provide. This same reasoning applies to the additional 15 years extension period where the compact would again pay roughly $30 million more than the current Interim Use Agreement. It should be noted that the payments under the compact could be increased, but only if the United States agrees and they have no legal obligation to do so.

8. How is the new Kwajalein Agreement different from the old Kwajalein Agreement?

(a) Length of agreement. In the old agreement, the United States had the option of extending its use of Kwajalein for an additional 35 years after the initial 15 years. In the new agreement, the United States would have the option of extending its use of Kwajalein for an additional 15 years after the initial 15 years. Under the new agreement, the Americans would pay a smaller amount for this option, but since they must pay it sooner it would be an equivalent amount.

(b) Development funds. Through the Interim Use Agreement, the United States would pay an additional $6 million to the Kwajalein Atoll Development Authority to improve living conditions on Ebeye and develop living areas on other available islands in the Kwajalein Atoll.

(c) Kwajalein Atoll Corporation-Republic of the Marshall Islands Land Use Agreement. There is now an agreement that sets out and guarantees payments to the Kwajalein landowners and Kwajalein Atoll Development Authority from the money that the United States would give to Marshall Islands under the compact.

(d) Return of islands. The islands of Ninni, Gea, Gugeegue, Ningi, North Loi and South Loi would be returned. Furthermore, there would be increased access to the mid-atoll corridor.

(e) Community relations council. A Community Relations Council, made up of senior representatives from the Marshall Islands and the United States was established to work out problems between the Kwajalein Missile Range and the local Marshallese community.

9. What are some of the disadvantages associated with the Kwajalein Missile Range?

The opportunity to get jobs and incomes has attracted many Marshallese to Ebeye, creating overcrowding and poor living conditions. Also, the rapid change from the old ways to the new money ways creates new social problems.

10. What military operating rights would the Americans have in Kwajalein? (see art. IV of the military use agreement)

(a) The United States would have free access to and unrestricted control of the Kwajalein Missile Range.

(b) The United States might take within the Kwajalein Missile Range and within sea-beds, water areas and air space adjacent to or in the vicinity of the Range, such measures as were necessary for the use, security and defence of the Range.

11. What responsibilities would the Americans have in operating the Kwajalein Missile Range? (see art. IV of the military use agreement)

The United States would have to use its "best efforts" to avoid activities which could harm the well-being of the Marshallese.

12. Could the United States let other foreign countries use the Kwajalein Missile Range? (see compact sects. 315 and 316)

Yes, the United States might invite forces of other countries to use the Range, but those forces must be under the control of the United States and in the case of "major units", which is undefined in the compact, the Marshall Islands could forbid it.

13. How does the agreement hope to deal with matters affecting relations between the Kwajalein Missile Range and the local Marshallese community on Ebeye? (see art. VII of the military use agreement)

By establishing a Community Relations Council made up of senior Marshallese and American officials to work out any problems affecting the local community.

14. With major disputes? (see art. IX, para. 2 of the military use agreement)

By the joint committee system and high level review in the United States Government (i.e. direct and personal appeal to the Secretary of Defense).

15. Who gets the Kwajalein money?

(Thousands of US dollars)

Group and type of money	Interim use period			Total	Compact period		15-year optional extension		
	1983	1984	1985	1983-1985	Years 1-15	Total	16	Years 17-30	Total
Landowners									
Inflation adjusted payments	5 164	5 164	5 164	15 492	4 260	63 900 (60%)	7 100	7 100	106 500
Fixed payments	-	-	-	-	1 900	28 500	-	-	-
Option payments	2 000	1 000	-	3 000	-	-	2 500	-	2 500
Total	7 164	6 164	5 164	18 492	6 160	92 400	9 600	7 100	109 000
Kwajalein Atoll Development Authority									
Inflation adjusted payments	-	-	-	-	2 840	42 600 (40%)	-	-	-
Fixed payments	1 900	1 900	1 900	5 700	-	-	1 900	1 900	28 500
Development funds	-	2 000	4 000	6 000	-	-	-	-	-
Option payments	-	1 000	-	1 000	-	-	-	-	-
Total	1 900	4 900	5 900	12 700	2 840	42 600	1 900	1 900	28 500
Grand totals	9 064	11 064	11 064	31 192	9 000	135 000	11 500	9 000	137 500

Note: Should the compact come into effect in either 1984 or 1985, then the total inflation adjusted payments would increase from $5,164,000 to $7,100,000. Fixed payments would stay the same. And the funds for development and option payments would still be paid out as scheduled in the Interim Use Agreement, 1983-1985. In other words, if the compact were in place in 1984, the Kwajalein people would receive $7,160,000 in landowner payments and $5,840,000 for the Kwajalein Atoll Development Authority. This means that under the compact, the Kwajalein people would get $2 million more each year.

16. How much more money would the Marshall Islands get from the United States in 1983 if it were under the compact and not under Trusteeship?

(Millions of US dollars)

	1982/83	Compact (first year)
Government operations a/	13.0	14.3
Kwajalein Missile Range tax revenues b/	1.4	2.3
Federal programme c/	4.9	3.0
Capital improvements d/	2.9	12.1
Government total	22.2	31.7
Kwajalein related e/	7.5	9.7
Radiation (177) f/	2.0	18.0
Grand total g/	31.7	59.4

Under the compact the Government would have about $9.5 million more, or close to a 43 per cent increase in revenues from the United States. Most of this increase would be for capital improvements and economic development (i.e. building roads, docks, schools, fishing boats, etc.). There would be a decrease in the amount of money directly available to continue federal programmes. This deficit could be made up from the increases in government operations and Kwajalein tax revenues.

Kwajalein payments to landowners and the Kwajalein Atoll Development Authority would increase by roughly $2 million. Radiation related payments would increase, by far, the most. For all the Marshall Islands revenues from the United States would increase by about 87 per cent.

Notes

a/ The total for 1982/83 government operations consist of the United States Interior Department's basic grant, fuel supplement and special maintenance funds. The compact total consists of section 211 (a) funding for the current account minus the amount designated for Kwajalein landowners ($11.4 million), section 215 current account funding for communications ($300,000), section 216 current account funding for ocean surveillance, health and medical, and scholarships, assuming the Marshall Islands receives at least 25 per cent of this funding which is jointly shared with the Federated States of Micronesia and Palau ($1.5 million), and an inflation adjustment payment based on an estimated minimum 3 per cent annual adjustment for 1981 to 1983 ($1.1 million).

b/ Source for 1982/83 is the Finance Office. The estimate for the compact is based on an increase in the tax rate on United States contractors' earnings at Kwajalein Missile Range from 3 to 5 per cent (Status of Forces Agreement, art. V, 1 (c)).

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c/ Source for 1982/83 is the Finance Office. The compact total is from the Federal Program Subsidiary Agreement, article XI. The compact total does not include the costs paid by the United States for weather, postal, aviation and Federal Emergency Management Agency (FEMA) (disaster) assistance. It also does not include the continuation of all federal post-secondary educational assistance during the initial four years of the compact for those already receiving such assistance. The money specified for post-secondary educational assistance (sect. 216 (a) (3)) was included in the total for government operations.

d/ Source for 1982/83 is the Finance Department. The 1982/83 figure represents a five year average of actual United States grants for the capital improvements programme. The compact total consists of section 211 (a) funding for the capital account minus the amount designated for the Kwajalein Atoll Development Authority ($7.6 million), section 215 capital account funding for communications ($3 million), section 216 (b) capital account funding for ocean surveillance, assuming the Marshall Islands receives at least 25 per cent of this funding which is jointly shared with the Federated States of Micronesia and Palau ($500,000), and section 217 inflation adjustment payment based on an estimated minimum 3 per cent annual adjustment from 1981 to 1983 ($1 million).

e/ Source for 1982/83 is the Interim Use Agreement, 1982-1985. It consists of a $5,164,000 payment to the landowners, a $1.9 million payment to the Kwajalein Atoll Development Authority, and an inflation adjustment payment estimated by assuming a 3 per cent annual adjustment ($479,000). The compact total consists of a $6,160,000 payment to the landowners, a $2,840,000 payment to the Kwajalein Atoll Development Authority, and an inflation adjustment payment estimated by assuming a 3 per cent annual adjustment ($700,000). It should be noted that neither the 1982/83 figure nor the compact figure includes the 1983 payment of $2 million for the United States option to extend the length of the Kwajalein agreement for an extra 15 years. This sum would be paid regardless of whether or not the compact was in effect. However, should the compact be defeated, this $2 million would be taken out of future interim use agreements.

f/ Source for 1982/83 is an estimate from the Attorney General's office. It is an estimate of food and other programme assistance from the United States. The compact total is the first year's earnings from the $150 million fund. It should be noted that neither the 1982/83 figure nor the compact figure includes payments such as trust fund earnings which would continue regardless of whether or not the compact is in effect.

g/ Some may be confused that the total given in the short summary ($52.3 million) for the first year of the compact is less than the total given here ($59.4 million). The short summary total does not include the joint fund payment, the tax revenue from United States contractors at the Kwajalein Missile Range or the inflation adjustment payments. The short summary total ($52.3 million) plus the joint fund payment ($2 million) plus their tax revenue from the Range ($2.3 million), plus inflation adjustment ($2.8 million) equals total given here ($59.4 million).

Annex VI*

THE COVENANT AND THE COMPACT

1. Some people are interested in forming closer ties with the United States. To give an idea of what this might mean, the following is a summary of the differences between the Covenant to establish a commonwealth with the Northern Mariana Islands and the compact of free association between the United States and the Marshall Islands.

POLITICAL AND LEGAL DIFFERENCES

Control of local affairs

2. Under free association, the Marshall Islands would be in charge of local affairs, according to its own Constitution.

3. Under the Covenant, the Mariana Islands has local government but is under the Constitution and many of the laws of the United States.

Control over foreign affairs

4. Under free association, the Marshall Islands would be in charge of its foreign affairs; however the United States would be in charge of all military affairs.

5. Under the Covenant, the United States and not the Mariana Islands is in charge of foreign affairs.

Constitution

6. Under free association, the compact and the Marshall Islands Constitution would have to be consistent, that is agree with each other.

7. Under the Covenant, the Mariana Islands Constitution had to be a republican form of government (United States, not British). Also, the Mariana Islands Constitution had to be approved by the United States Government and be consistent with the United States Constitution and the United States law establishing the commonwealth.

Application of United States laws

8. Under free association, the United States Constitution would not apply to the Marshall Islands. The United States laws would apply to the Marshall Islands only to a limited extent, as specifically provided for in the compact (i.e. environmental laws).

9. Under the Covenant, the United States Constitution and laws apply to the Mariana Islands with some exceptions.

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* The text of the annex was written and distributed by the Commission on Political Education.

United States citizenship

10. Under free association, the Marshallese would not become United States citizens.

11. Under the Covenant, the people of the Mariana Islands can become United States citizens.

United States courts

12. Under free association, United States courts would have no jurisdiction over matters concerning the Marshall Islands, except for some limited circumstances like enforcement of the United States compliance with environmental regulations.

13. Under the Covenant, the role of the United States courts is increased. The Mariana Islands courts will enforce and interpret the laws of the Mariana Islands while the United States courts will enforce and interpret the Constitution, laws and treaties of the United States. (Note: It seems probable that radiation-affected people under a covenant agreement would give up their payments under the compact and instead seek compensation in United States courts.)

Duration of political status

14. Free association is indefinite. It would last until terminated by mutual consent or unilaterally by either the United States or the Marshall Islands. However, most of the economic and military provisions of the compact would need to be renegotiated after 15 years.

15. The Covenant is a permanent agreement. However, a change into another political status with the United States, such as territory or statehood, could be accomplished through mutual consent.

ECONOMIC DIFFERENCES

United States financial assistance

16. Under the compact, the Marshall Islands would initially receive more money than it receives now. Future payments guaranteed for 15 years would be reduced in the expectation that the Marshall Islands would be earning additional income from its control over the sea, dealings with foreign nations and local economic development.

17. Under the Covenant, the Mariana Islands receives a guaranteed $14 million per year for seven years. The Mariana Islands will continue to receive this amount after seven years unless the United States Congress decided to change the amount. This money is used for three items: government operations, capital improvements and loans for businesses. The amount received by the Mariana Islands represents a higher per capita payment than what the Marshall Islands would receive under free association. The Mariana Islands receives a per capita payment of $833 each year measured in 1975 dollars. The Marshallese would receive under the compact a per capita payment of $819 for the first year of the compact measured in 1981 dollars. These figures do not include military base payments or payments for radiation-affected people.

Inflation adjustment

18. Under free association, the Marshall Islands would receive payments to compensate partially for inflation. Most of the money given by the United States would be adjusted by two thirds of the percentage increase in the gross national product implicit price deflator or 7 per cent, whichever is less.

19. Under the Covenant, the Mariana Islands receives payments to compensate completely for inflation. All of the money given by the United States is adjusted by the percentage increase in the United States consumer price index.

Federal programmes

20. Under free association, most federal programmes, with some exceptions such as weather, postal and disaster assistance, would end. The United States Congress could restore federal programmes in the future but would not be obligated to do so.

21. Under the Covenant, the Mariana Islands will receive the full range of federal programmes and services available to United States Territories.

Base payments

22. Under free association, the compact would provide an annual payment of $9.0 million, of which $7.1 million would be partially adjusted for inflation. Also, the United States would pay $6.5 million for the option to extend its use of Kwajalein for an additional 15 years. The total payment for the first 15 years of the agreement would be $141.5 million.

23. Under the Covenant, the Mariana Islands has already received a lump sum payment of $33 million. There are no yearly payments or any other additional payments.

United States income taxes

24. Under free association, the Marshallese would not pay United States income taxes. Also, Marshallese living in the United States would not pay United States income taxes, but rather Marshallese taxes.

25. Under the Covenant, the United States can impose an income tax; however, the United States would turn over the money collected to the Mariana Islands.

Marine resources and the law of the sea

26. Under free association, the Marshall Islands would have complete control of its marine resources to the full extent recognized by international law.

27. Under the Covenant, the United States Government maintains control over marine resources. Currently the United States does not recognize the right of nations to charge fees for catching tuna. Also, the United States is presently opposed to the United Nations Law of the Sea Treaty.

Right of the Marshallese to live and work in the United States

28. Under free association, the Marshallese would be free to live and work in the United States. However, subject to United States congressional approval, Guam and the Mariana Islands could adopt restrictions on habitual residence (over one year) by Marshallese.

29. Under the Covenant, the people of the Mariana Islands are free to live and work in the United States.

Right of United States citizens to live and work in Micronesia

30. Under free association, United States citizens would be free to live and work in the Marshall Islands, but the Marshall Islands could put restrictions on habitual residence (over one year) by United States citizens.

31. Under the Covenant, Americans are free to live and work in the Marianas.

Restrictions on land alienation

32. Under free association, the Marshall Islands Government would be free to place restrictions on the sale or long-term lease of land to non-Marshallese.

33. Under the Covenant, the Mariana Islands can restrict the sale or long-term lease of land to persons who are not of Northern Mariana Islands descent.

MILITARY DIFFERENCES

United States military authority

34. Under free association, the United States would have full military authority for at least 15 years.

35. Under the Covenant, the United States has full military authority without any time limitation.

Defence obligation

36. Under free association, the United States would defend the Marshall Islands as if it were part of the United States. Should the Marshallese not renew the military provisions of the compact after 15 years, then the United States would be committed to defending the Marshall Islands not as it defends its own territory but as it defends the territory of other foreign countries.

37. Under the Covenant, the United States would defend the Mariana Islands as if it were part of the United States because it is part of the United States.

Denial rights

38. Under free association, the United States would have the right to close access to the Marshall Islands by third country military forces or for third country military purposes.

39. Under the Covenant, the United States has the same right.

Base rights

40. Under free association, the United States would have the right to use the Kwajalein Missile Range for 15 years and then for an additional 15 years should it so decide. The United States would not have the right of eminent domain. Should it want additional land, the United States would have to negotiate for it and the Marshall Islands could say no.

41. Under the Covenant, the United States has the right to use 17,799 acres on Tinian Island, 177 acres on Saipan Island, and the entire island of Farallon de Medinilla (206 acres). The United States has the right to use these areas for 50 years and then for an additional 50 years should it want to. The United States also has the right of eminent domain. The power of eminent domain will be exercised only to the extent necessary and in compliance with applicable United States laws, and with full recognition of the due process required by the United States Constitution. But if seriously needed, the United States can take land.

Nuclear weapons

42. Under free association, the compact would prohibit the testing and dumping of nuclear weapons. The compact would not prohibit the storage or transition of nuclear weapons when needed to fulfil United States defence obligations and rights.

43. Under the Covenant, there are no restrictions on the United States military's use of nuclear weapons. The United States military, however, will follow its own strict safety rules.

Disputes

44. Under free association, the Marshall Islands would have to refrain from actions which the United States determined to be incompatible with its security and defence authority. A joint committee made up of senior Marshallese officials and senior United States military officials would try to resolve disputes. The United States Secretary of Defense would be available to hear personally any appeals from the Marshallese for a change in United States policy.

45. Under the Covenant, the United States also makes the final decision regarding military matters. But no mechanism is outlined for resolving disputes.

SUMMARY

46. The main political differences between the compact and the Covenant is that under the compact the Marshallese would control both local and foreign affairs while under the Covenant the people of the Mariana Islands control just local affairs. Also, the degree of local control is less under the Covenant. However, the Covenant gives the people of the Mariana Islands all the rights of American citizens, including the right to United States courts. The Covenant is a permanent agreement while the compact is for an indefinite time.

47. The main economic differences between the compact and the Covenant is that under the Covenant, the people of the Mariana Islands will receive more money and a full range of federal programmes. The Covenant, however, forgoes certain economic benefits such as national jurisdiction over ocean resources and the capability to negotiate assistance from foreign Governments.

48. The main military difference between the compact and the Covenant is that under the Covenant the United States has the right to eminent domain.

Annex VII

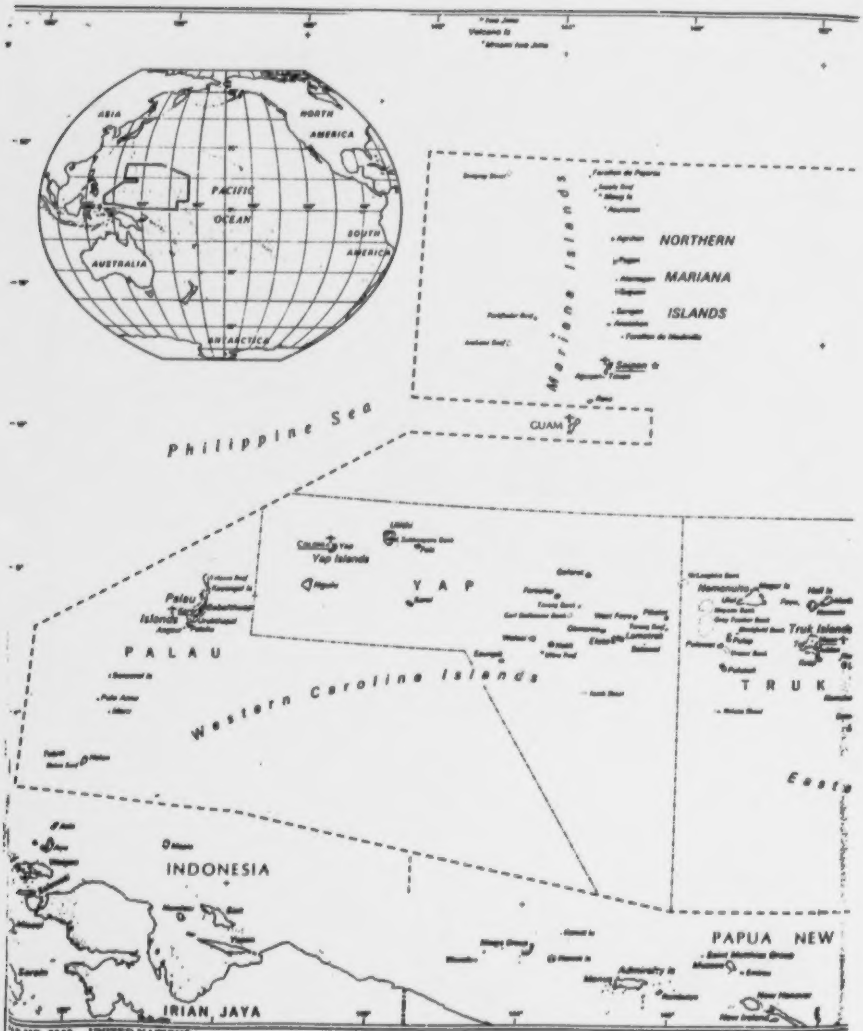
ITINERARY OF THE VISITING MISSION

Date	Place	Remarks
28 August 1983	Honolulu, Hawaii	Arrived from New York
30 August 1983	Honolulu, Hawaii	Departed by air for Majuro, the Marshall Islands, crossed the International Date Line
31 August 1983	Majuro	Arrived from Honolulu. Met with the President of the Marshall Islands, the Speaker of the *Nitijela* and ministers and senior officials
		Met with members of the Commission on Political Education
1 September 1983	Majuro	Met with members of the political education task force
		Met with the Chief Electoral Officer
2 September 1983	Majuro	Mission divided into two teams: A and B
		Team A
2 September 1983	Majuro	Met with traditional leaders (*Iroij*)
		Met with the coalition group who opposed approval of the compact
		Met with community leaders and the general public at Rita, Majuro
3 September 1983	Majuro	Departed by air for Kili
	Kili	Met with community leaders and the general public
5 September 1983	Arno	Sub-group 1 of Team A departed by boat for Arno
		Met with community leaders and the general public
	Jaluit	Sub-group 2 of Team A departed by air for Jaluit
	Jaluit	Met with community leaders and the general public

Date	Place	Remarks
6 September 1983	Ejit	Met with community leaders and the general public
	Laura	Met with community leaders and the general public
7 September 1983		Observed preparations and arrangements for polling day
		Observed polling places in Majuro Atoll

Team B

1 September 1983	Enewetak	Met community leaders and general public
2 September 1983	Kwajalein	Met with Marshall Islands Government
		Liaison personnel: organized schedule of visit
	Ebeye	Met with the Mayor of Kwajalein Atoll and the Secretary of the Kwajalein Atoll Corporation
		Met with representatives of the Kwajalein Independent Landowners (Ten-Ten)
3 September 1983	Third Island and Roi-Namur	Met with community leaders and the general public
4 September 1983	Ebeye	Met with community leaders and the general public
5 September 1983	Kwajalein	Observed arrangements for polling day
6 September 1983		Observed polling places on Kwajalein, Ailinglaplap and Rongelap Atolls
8 September 1983		Mission observed counting and tabulation of votes
10 September 1983	Majuro	Departed by air for Honolulu
11 September 1983		Members of the mission returned to New York
10-15 September 1983	Majuro	A staff member of the United Nations Secretariat remained on Majuro to continue observation of the counting and tabulation of votes.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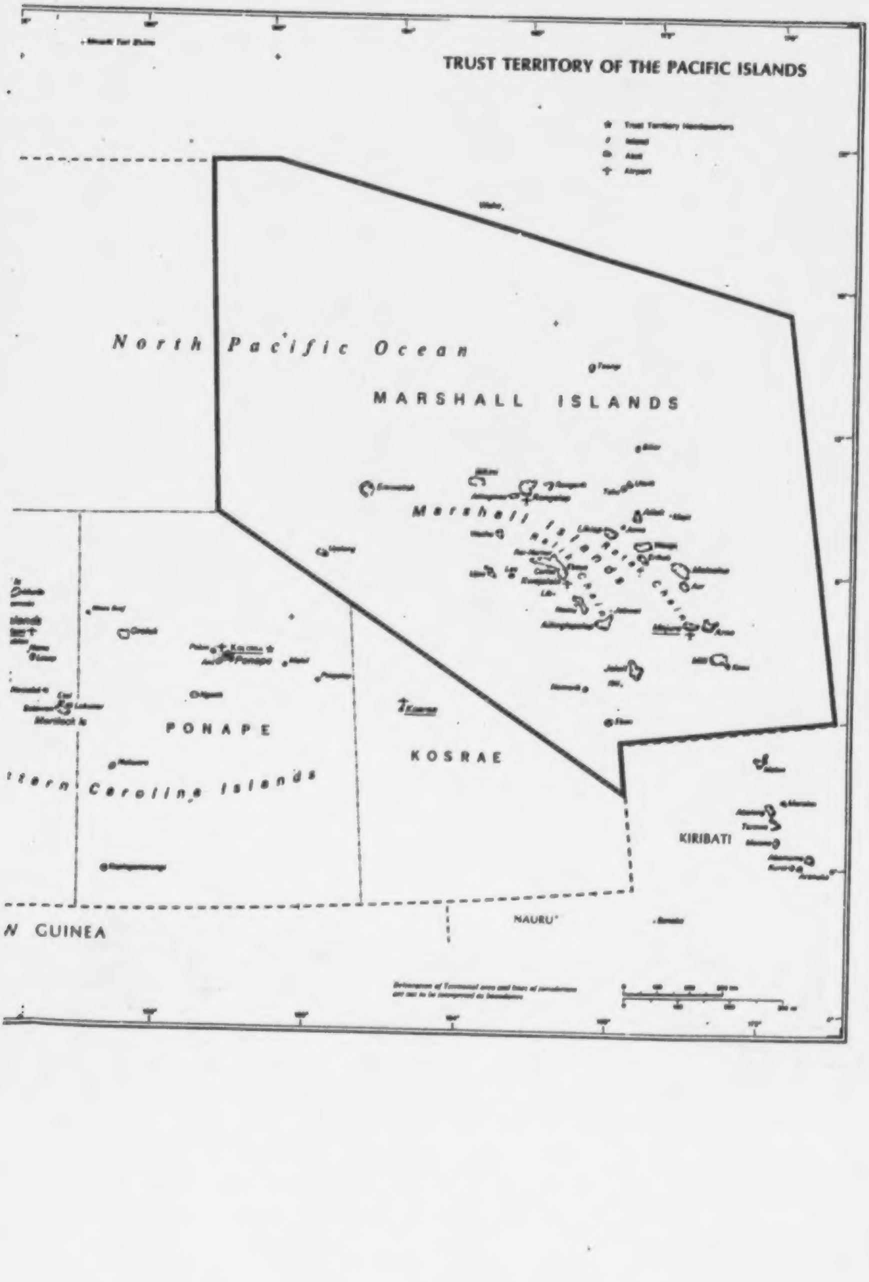
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Agenda item 5

CONDITIONS IN THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Report of the Drafting Committee

1. At its 1575th meeting, on 24 May 1984, the Trusteeship Council appointed a drafting committee composed of the representatives of France and the United Kingdom of Great Britain and Northern Ireland to propose, on the basis of the discussions which had taken place in the Council, conclusions and recommendations on conditions in the Trust Territory of the Pacific Islands.

2. The Drafting Committee held four meetings.

3. In the light of the general discussions in the Trusteeship Council on conditions in the Territory, the Committee drafted a number of conclusions and recommendations which it considered as reflecting the opinions of the majority of the members of the Council and which are set out in the annex to the present report.

4. The Committee recommends that the Trusteeship Council adopt the conclusions and recommendations set out in the annex and include them at the end of the Council's report to the Security Council.

Adopted 14 June 85
by 3 to 1

Annex

[redacted] CONCLUSIONS AND RECOMMENDATIONS

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A. POLITICAL ADVANCEMENT

1. The Trusteeship Council reaffirms the inalienable rights of the people of Micronesia to self-determination, including the right to independence, in accordance with the Charter of the United Nations and the Trusteeship Agreement. It reiterates that free association is an option that is not incompatible with the Trusteeship Agreement, provided that the populations concerned have freely accepted it. The Council hopes that in the near future, the Administering Authority will take up the matter of the termination of the Trusteeship Agreement both with the Trusteeship Council and the Security Council, in accordance with Article 83 of the Charter.

2. The Council takes note of the reports of the visiting missions which observed the plebiscites in the Federated States of Micronesia and the Marshall Islands. It endorses the Missions' conclusions that, despite some administrative shortcomings, both plebiscites were run by the constitutional Governments so as to ensure the free and fair expression of the wishes of the people.

3. The Council notes with satisfaction that the Trust Territory has continued to expand its international relations. It urges that priority continue to be given to the promotion of closer contacts with countries of the region, not only in the economic field but also at the political, educational and cultural level.

B. ECONOMIC ADVANCEMENT

1. Overall economic policy

Harmonization of economic development

4. While noting that responsibility for development lies primarily with the four constitutional Governments, the Council regrets that the concept of drawing up an overall development programme for the Territory as a whole has not made more headway.

5. The Council regrets, in particular, the disparities in levels of development between different areas and the instances of duplication, which are likely to discourage potential investors.

6. The Council urges the Administering Authority to play a constructive role in this area by promoting the establishment of procedures for consultation between the various authorities concerned. A framework to bring together as often as necessary representatives of the various constitutional Governments and of the Administering Authority could thus make it possible to ensure the harmony and coherence of development projects.

Provision of more reliable information

7. The Council notes the inadequacy of the statistical information submitted by the Administering Authority. Homogeneous, coherent and reliable statistical data are not only a valuable tool for the work of the Council but are also essential for determining the Territory's economic policy options.

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8. The Council therefore requests the Administering Authority to include in its 1984 report a basic table of statistical information on the various entities comprising the Territory. This table should follow the standard form observed by the United Nations in its reference work World Statistics in Brief.

9. The Council wishes to point out that the basic statistical data should constitute a basic source of information which would have to be brought up to date annually. The other statistical data contained in the report of the Administering Authority are also useful to the Council, which wishes, as a general rule, to have before it the most extensive information possible.

10. The Council notes that the economic section of the report of the Administering Authority too often favours the mere compilation of information, providing description instead of analysis and illustration at the expense of explanation. The Council considers it essential that, in the future, more care be given to the preparation of the report, in order to make it clearer, more precise, more logical and, above all, more cohesive. In particular, it should henceforth indicate the guiding principles applied in economic policy, the objectives envisaged, the criteria of choice and the order of priorities with regard to activities in the Territory.

Public finance

11. The Council takes note of the fact that the constitutional Governments' budgetary allocation for operations has increased by 7.5 per cent and that the grant for infrastructural improvements has almost doubled.

12. The Council notes with satisfaction that the Administering Authority has provided the constitutional Governments with technical assistance in accounting and financial management. It notes also that a computerized system will be operational before the end of the fiscal year in the Federated States of Micronesia, the Marshall Islands and Palau. It welcomes the fact that the local authorities will thus have at their disposal increased and improved means of preparing their budgets and ensuring proper management of their public finances.

13. The Council reiterates its support for efforts made in the allocation of public funds. In this regard, it takes note with satisfaction of the reduction of electricity production costs at Yap and the savings realized in the Marshall Islands and Palau.

14. The Council reiterates its concern that certain federal programmes have been reduced or discontinued because of the general policy of the United States or in anticipation of the termination of the Trusteeship Agreement.

15. The Council expresses the hope that Palau's request for the rescheduling of funds will be reconsidered and approved in the near future.

16. The Council takes note of Palau's adoption of a new uniform fiscal code. The Council reiterates its recommendation that import duties should be levied in order to make the Territory's fiscal system less heavily dependent on income tax and to finance economic development.

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17. The Council recommends the development of programmes of loans for small and medium-sized enterprises and for the establishment or improvement of agricultural operations, building and tourism. It notes with satisfaction that the Economic Development Loan Fund (EDLF) is functioning fully through the central banks in each of the governmental centres.

International trade

18. The Council takes note with satisfaction of the special exemption granted to the Territory by the United States under Headnote 3A of the United States Tariff Code, which will allow the duty-free entry into the United States of products exported by the Trust Territory.

19. The Council regrets the lack of precise and complete information on the nature, volume and geographical origin or destination of trade between Micronesia and the outside world.

20. The Council nevertheless notes that the Territory is still largely dependent on the outside world, even for basic necessities. The Council hopes that plans for the short-, medium- and long-term reduction of this dependence will be drawn up and communicated to it.

21. The Council takes note with interest of the promulgation of a uniform customs system by Palau. It hopes that consideration will be given to ways in which the Trust Territory can diversify and develop its trade and redress the imbalance of its foreign trade, including the establishment of a customs union and the imposition of import duties, with the technical and economic assistance of the Administering Authority.

2. Agriculture and marine resources

Agriculture

22. The Trusteeship Council reaffirms that, despite the transfer of responsibility for agriculture to the constitutional Governments, the Administering Authority has a duty to help them to expand agricultural and livestock production, as well as fisheries, as a matter of priority.

23. The Council welcomes the existing agricultural training programmes and hopes that further initiatives will be developed with the United States Department of Agriculture and with other countries.

24. The Council takes note of the assistance provided by the Administering Authority in the area of forestry utilization. It recommends that this assistance be continued so that a forestry administration can be established throughout the Territory.

25. The Council takes note with satisfaction of the development programmes for certain types of production, such as copra. It hopes that other programmes of this

kind will be established. It particularly requests the Administering Authority to provide technical and scientific assistance to the Territory in order to determine the types of production best suited to the soil and climate and to ensure external trade markets for Micronesia.

26. To that end, the Council recommends that a study be undertaken to determine the types of production and farming that would enable Micronesia to make use of comparative advantages with a view to increasing its exports and reducing its dependence on imports.

27. The Council takes note of the important role being played by agricultural co-operatives. It recommends that similar formulae be encouraged so as to promote a more rational and profitable utilization of the land.

28. The Council reiterates the hope that the cadastral survey of private lands will be continued in order to facilitate the settlement of land disputes. It encourages the Administering Authority to provide the constitutional Governments with all necessary technical assistance.

Marine resources

29. The Council reiterates the importance it attaches to the development of the Territory's marine resources, which should be a priority goal.

30. The Council takes note of the progress made in developing the infrastructure as well as of the fishing agreements concluded with certain organizations and Governments.

31. The Council encourages all initiatives aimed at expanding the Territory's trade and promoting its exports. In that connection, it takes note with satisfaction of the market research studies undertaken, for example in the Philippines. It expresses the hope that these studies will have some practical application.

32. The Council takes note of the Administering Authority's promise that it will permit the Governments of the freely associated States to sign the Convention on the Law of the Sea upon termination of the Trusteeship Agreement.

33. The Council recognizes the concern expressed by the representatives of the Northern Mariana Islands concerning fishing grounds. It believes that the Administering Authority must ensure that the interests of the Northern Mariana Islands in this area are recognized and safeguarded.

3. Industry, construction and public works

34. The Council welcomes the establishment of new companies in the Territory. It takes note, in particular, of the establishment of two new clothing factories in the Northern Mariana Islands and the construction of a button factory in the Marshall Islands. However, it reiterates its concern at the inadequate industrial development in the Trust Territory and reaffirms that priority should be given to the establishment of small-scale local industry.

35. The Council takes note of the special conditions imposed on the construction industry, particularly the constraints related to preventing typhoon damage. It nevertheless believes that there is *a priori* no incompatibility between the need to observe safety regulations and increased use of local subcontractors.

36. The Council believes that because of the impact the construction industry can have on all sectors of the economy, the number of jobs that it creates and its low reliance on imports, the industry is one of the keys to Micronesia's economic development. The Council therefore hopes that a substantial and growing part of future activity in that area will directly benefit Micronesian businesses and workers. In that connection, it notes with satisfaction the construction of a hotel at Kosrae by a local firm and the utilization of local materials for two hotels in Ponape. It also notes the requirement introduced in Palau that part of public works construction be subcontracted to local firms.

37. The Council takes note of the existing projects concerned with the manufacture of bricks from laterite. It encourages all initiatives designed to develop the Territory's resources.

38. The Council takes note with keen satisfaction of the progress made in improving the Territory's water supply. In particular, it notes the installation of a saltwater purification system in Majuro, the provision of drinking water 24 hours a day in Yap and Palau, the ongoing well-drilling activities in Truk and the project to improve the water supply system in Ebeye. It hopes that the difficulties relating to freshwater supplies in the Marshall Islands and particularly in Kwajalein will soon be resolved and that special attention will be given to the problem of setting up storage tanks throughout the Territory.

4. Transport, communications and tourism

Transport and communications

39. The Council welcomes the efforts of the various entities and the Administering Authority to develop the Territory's telecommunication system. Bearing in mind the natural conditions and the constraints that they impose, the Council believes that this sector is one of the keys to the development of Micronesia. It hopes that the system will become operational throughout the Territory as soon as possible.

40. The Council takes note of the improvements in the Territory's road system. It notes, in particular, that additional efforts have been made with regard to the circumferential road projects in Ponape and in Kosrae. It hopes that these operations will be continued so that the entire Territory will soon have a road network serving the main urban centres and a minimum network in the outer islands.

41. The Council welcomes the opening of the airports at Truk, Yap, Kosrae and Palau. It hopes that the various facilities that have yet to be provided will soon be completed and fully operational.

42. The Council hopes that the air service between Micronesia and the outside world will be increased. It notes with satisfaction the inauguration of direct

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service between Nagoya and Saipan, the increase in the number of flights to and from Palau and the profits being made by the Airline of the Marshall Islands. It hopes that these will not remain isolated examples and requests the Administering Authority to give every assistance in that area.

43. The Council welcomes the construction of a transshipment port in Kosrae. It notes that all former Trust Territory field-trip ships have been transferred to the constitutional Governments and are under their control.

Tourism

44. The Council emphasizes the importance it attaches to tourism in the development of the Territory's economy.

45. The Council, however, recalls that the development of tourism should be gradual and carefully planned in order not to overwhelm the small and fragile economies, social structures, environment and cultural traditions of the Territory.

46. The Council takes note of the boom in tourism in the Northern Mariana Islands, where the number of visitors increased by 12 per cent in 1982/83, testifying to its tourism potential.

47. The Council is pleased to note that new hotels are being built in the Marshall Islands and Palau in order to increase accommodation capacity.

48. The Council notes the interest expressed in the tourism sector by foreign investors and hopes that mutually beneficial co-operation will develop through tourism associations and other regional groups.

49. The Council expresses the hope that the opening of new air services with other countries in the Pacific and the image of itself that Micronesia promotes abroad will encourage a sustained and balanced development of the tourist industry in the future.

C. SOCIAL ADVANCEMENT AND ENVIRONMENTAL ISSUES

1. Health

50. The Council notes that responsibility for health care has been devolved to the constitutional Governments and that the Trust Territory Office of Health Services continues to act in a co-ordinating capacity, providing technical advice to the local governments. The Council urges the Administering Authority to establish a co-ordinating mechanism to continue the work of the Office of Health Services after termination of the Trusteeship Agreement.

Hospitals

51. The Council notes with satisfaction that the Administering Authority continues to give priority to developing hospital services throughout the Trust Territory.

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52. The Council is concerned at the reported inadequacy of some health services in the Northern Mariana Islands, but it welcomes the fact that a new hospital is under construction in Saipan, for which the United States Congress has appropriated $20.0 million. It also welcomes the construction of a new health care centre at Saipan at a cost of $30.0 million. It notes that the United States Congress recently authorized an additional $16.0 million towards the cost of this project and hopes that the Administering Authority will continue to provide assistance, particularly for staff training.

53. The Council notes with regret the claim by Mr. Alfonso Oiterong, Vice-President of Palau, that Palau still lacks modern medical and health facilities. Nevertheless, the Council is pleased that the Administration has requested $18.0 million from the United States Congress for construction of a 30-bed hospital complex, in addition to the $860,000 that has already been provided.

54. The Council urges the Administering Authority to give attention to improving the hospital facilities on Ebeye Island. It notes in that respect that $722,000 has been appropriated for the renovation of the Ebeye hospital. The Council looks forward to its early completion.

55. The Council is pleased to note that a new 80-bed hospital complex is likely to be completed in Majuro by early 1985, providing the Marshall Islands with more adequate medical facilities.

Other health services

56. The Council notes that private dental practices have been established in the state of Ponape and the Northern Mariana Islands and that private medical practices now exist in the Marshall Islands, Palau and the state of Ponape. The Council hopes that this will not detract from a high standard of dental care being provided throughout the Territory.

57. The Council is concerned at the continued incidence of cholera in the Trust Territory, particularly in Truk, but it appreciates the efforts of the Administering Authority and the constitutional Governments to eradicate the disease. The Council urges that increased attention be given to improving sanitation facilities and disinfecting water supplies; it welcomes the emphasis being placed on these measures in Truk.

58. The Council recognizes that a large number of federal agencies have been involved in tackling the problem. It notes with satisfaction that although 165 cases of cholera have been reported since September 1983, there have been no deaths related to this disease.

59. While conscious of the need to take into account local social and cultural attitudes, the Council stresses the importance of continuing efforts in the area of family planning. It expresses satisfaction at the provision of family planning training in Guam during 1983. It notes that ESCAP has been providing advice and technical assistance and hopes that the Commission will continue to do so.

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60. The Council notes with concern that severe budget cut-backs in federal programmes for the training of health care professionals is likely to have a negative impact in Micronesia. The Council considers that, especially with termination of the Trusteeship Agreement so near, every effort should be made to provide funding for training in the health field.

61. The Council notes with concern that the cost of medical referrals for the Marshall Islands Government is expected to exceed $5.5 million by the end of 1984. It notes that the Marshall Islands Government is seeking assistance from the United States in discharging that debt. The Council urges the Administering Authority to give urgent attention to this problem.

Co-operation with international bodies

62. The Council welcomes the continued co-operation in the health field between the Trust Territory and the specialized agencies and other organizations of the United Nations system such as the World Health Organization (WHO), the United Nations Children's Fund (UNICEF) and the United Nations Fund for Population Activities (UNFPA).

2. Labour, population and community welfare

Labour

63. The Council notes the Administering Authority's view that employment policies are best left to the local governments. It considers, however, that it is the responsibility of the Administering Authority to assist in and contribute directly to measures aimed at reducing unemployment.

64. The Council urges the Administering Authority to encourage the local governments to give priority to the establishment of a co-ordinated employment policy and to facilitate free movement of labour throughout Micronesia.

65. The Council welcomes the coming into effect in 1983 of the Job Training Partnership Act, under which a new job training programme was established throughout the Trust Territory for youths and unskilled adults, with emphasis on employment in partnership with the private sector. It hopes that the programme which was established with a budget of over $640,000, will be continued.

66. The Council also welcomes the continuation of other job training programmes throughout the Trust Territory in 1983 and that of the 61 participants placed with employers in the private sector, 75 per cent were retained upon completion of their training. The Council urges that efforts be made to expand job-related training of this sort.

67. The Council notes with interest that a private school, the Ponape Agriculture and Trade School (PATS), in Ponape, is concerned principally with agricultural training. It calls upon the Administering Authority to provide and co-ordinate local training facilities in this important area.

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Population movements

68. The Council notes that, according to the figures in the Administering Authority's report, there has been a continuing shift of population away from the outer islands to the urban centres. The Council accepts that much of this migration is an inevitable consequence of industrial development, but it urges the Administering Authority to monitor carefully any ill-effect that may be caused by these changes, particularly in relation to housing and social services.

69. The Council expresses surprise at the erratic fluctuation in population figures from year to year, in particular for Palau. It hopes that the Administering Authority will provide a fuller explanation of this phenomenon.

Community welfare

70. The Council notes that community development projects continue to prove successful. It applauds in particular the work of the Civic Action Teams, not only for their practical contributions to many types of infrastructure projects but also for inculcating a sense of self-reliance in the local population.

71. The Council welcomes the increased attention being given by the Office on Aging to the care of the elderly and considers this of particular importance in preparing for the termination of the Trusteeship Agreement.

72. While considering that food aid may often have a counter-productive effect, by discouraging local production and increasing dependency on the donor, the Council nevertheless hopes that the Administering Authority will continue to provide such help where there is a real and demonstrable need.

73. The Council is pleased to note that the Administering Authority will continue to provide assistance, through the Justice Improvement Commission, to youth-related projects.

74. The Council notes the attention given by the Administering Authority to proper training in crime prevention, particularly with regard to counter-measures against smuggling, fraud and narcotics. It notes that further training is being considered and hopes this will be forthcoming.

75. The Council notes with satisfaction that the housing loan programme for the Federated States of Micronesia has not been discontinued and that an additional $150,000 for housing loan programmes throughout the Trust Territory is awaiting approval from the Department of Housing and Urban Development (HUD).

3. Other matters

War claims

76. The Council takes note of the fact that payment of $24.3 million in Title I war claims under the 1971 Micronesian Claims Act is subject to the provisions of United States Public Law 95-134 being met. It expresses the hope that the disbursement of these funds will not be delayed on the basis of legal technicalities

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and that the United States Administration and the United States Congress will be able to take steps to ensure that the money is released before the termination of the Trusteeship Agreement.

Compensation for nuclear testing

77. The Council takes note of the substantial sums of money that the Administering Authority has paid to the Bikini Islanders in compensation for the damages inflicted on their atoll in the course of nuclear tests. While recognizing that no amount of financial assistance can adequately compensate the Bikini Islanders for the loss of their homeland, the Council nevertheless recognizes that the Administering Authority has accepted its liability in this matter and has been generous in the provision of finance. It also notes the financial provisions made under the compact of free association in regard to the Marshall Islands.

78. The Council reiterates its concern that the people of Bikini and Enewetak and their dependents, who have suffered as a result of the nuclear tests, should continue to receive adequate medical care, even after the termination of the Trusteeship Agreement. In addition, the Council welcomes the undertaking by the Administering Authority to keep the Council informed of the results of radiological tests on Bikini and asks the Administering Authority to continue to take all necessary measures to eliminate the radiation risks to which the inhabitants of the Marshall Islands might be exposed. The Council expects the Administering Authority to interpret its obligations in this area in the widest sense.

Dumping of nuclear waste

79. Despite the absence of any evidence that nuclear wastes have been dumped in the waters of the Trust Territory, the Council nevertheless recognizes that the matter could be one of serious concern to the inhabitants of the Trust Territory, who look to the Administering Authority to defend their interests in this matter.

80. The Council notes that studies on the environmental impact of any waste dumping are under way and that if plans were to be made in the future to construct a nuclear waste storage facility there would be opportunities to conduct scientific studies and consult with all interested parties.

Land use

81. The Council takes note of the fact that the Administering Authority has leased 7,300 hectares of land in the Northern Mariana Islands for contingency military purposes, at a total cost of $33.0 million. It expresses satisfaction that this land has in many cases been leased back to its original owners for a nominal fee for continued civilian use.

82. The Council notes with satisfaction that the new Interim Use Agreement in respect of land in Kwajalein now provides additional funding for the development of Ebeye Island in 1984 and 1985.

83. The Council welcomes the fact that the Administering Authority is using public land in Palau to carry out capital improvement projects.

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D. EDUCATIONAL ADVANCEMENT AND CULTURAL AFFAIRS

1. Education

84. The Council notes with interest the study being conducted by the Government of the Federated States of Micronesia with the aim of adapting elements of the educational systems of neighbouring islands to that of the Federated States.

85. The Council welcomes the fact that in 1984, in addition to regular educational funding from the Department of the Interior, all educational agencies of the Trust Territory will share $9 million under the Insular Area Consolidated Program for educational purposes.

Teacher training and school facilities

86. The Council notes with satisfaction that during the course of the year, the Trust Territory Office of Education continued to organize and sponsor various training sessions for teachers and handicapped students at the Community College of Micronesia. The Council notes the contribution of international and regional organizations such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the South Pacific Commission (SPC) to teacher-training programmes.

87. The Council, recognizing that the shortage of skilled teachers is still a major problem, expresses the hope that the Territorial Teacher Training Program, which is scheduled to continue for a minimum of one more year, will be extended at least until termination of the Trusteeship Agreement.

88. The Council is concerned at the set-backs faced by the Marshall Islands in the educational sector during 1982/83. It urges the Administering Authority to respond positively to requests from the Marshall Islands Government for assistance in this area.

89. The Council notes with concern that many elementary school facilities in the Marshall Islands remain inadequate. The Council notes with particular regret that many schools lack proper sanitary facilities and drinking water and that some have none at all. Moreover, many of the buildings appear to be in a state of disrepair. It notes the view of the Administering Authority that maintenance of school facilities is a local responsibility and that a programme is under way in the Marshall Islands to upgrade all school facilities. The Council looks forward to early improvements in this area.

90. The Council regrets the absence of a high school on Kwajalein. It hopes that attention can be given to the decentralization and improvement of high school facilities in the Marshall Islands, as well as in other parts of the Trust Territory.

Language training

91. The Council urges that more resources be devoted to the teaching of English now that termination of the Trusteeship Agreement is near. The Administering

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Authority is also asked to take practical steps to give the Micronesians the opportunity to learn languages other than English to enable them to develop closer links with other countries and to encourage study overseas.

Higher education and scholarships

92. The Council notes with pleasure that the Northern Marianas College has been established with the aim of providing the necessary skills essential to development in Micronesia.

93. The Council is pleased to note that in 1983, 400 students from Palau were enrolled in colleges and universities within the Trust Territory and overseas. It further notes that the Olbiil Era Kelulau, the National Congress of Palau, appropriated $175,000 in scholarship funds for Palau students in higher education. It is hoped that the Olbiil Era Kelulau will once again see fit to appropriate funds to finance students in higher education.

94. The Council urges the Administering Authority and the Governments of the Trust Territory to devise a system whereby those who receive vocational training or higher education at government expense should be obliged to offer their services to the state or a government agency for a specific period after graduation.

95. The Council is pleased that support for the College of Micronesia continues to grow and that enrolment in the vocational programmes operated by the Micronesian Occupational College is the highest in its history. It notes that funding has been sought for relocation and improvement of the College of Micronesia and expresses the hope that this will be forthcoming.

96. The Council also welcomes the wide range of vocational training being provided by federal agencies.

Dissemination of information on the United Nations

97. While appreciating the efforts made by the Administering Authority to ensure full dissemination of information on the United Nations, the Council nevertheless feels that government radio broadcasts could be made to publicize information received from the United Nations and to indicate where it can be obtained.

2. Culture

98. The Council notes with pleasure the efforts being made by the Government of the Northern Mariana Islands in the cultural field. It particularly welcomes the first of what is hoped will become an annual arts festival involving artists from neighbouring Micronesian islands.

99. The Council was most impressed by the exhibition on Micronesia held at United Nations Headquarters in May 1984 and the extent to which it revealed the potential for cultural activities in the Trust Territory.

100. The Council notes that the Palau Museum relies for financial assistance on grants from the Palau Congress. It is concerned that during 1982/83 the museum was not able to carry out its planned projects due to lack of funds. It is hoped that measures will be taken in 1984 to redress this unfortunate situation.

101. The Council expresses concern at the possible harmful effect of the process of development on the traditional culture of the islands. It is confident that the constitutional Governments will pay due regard to this important dimension in considering future development plans.

THE MICRONESIAN PLEBISCITES OF 1983

by Austin Ranney and Howard R. Penniman

American Enterprise Institute

for Public Policy Research

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PREFACE

The 1983 plebiscites[1] in the Micronesian polities of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands on the Compact of Free Association with the United States are interesting for a number of reasons. They are interesting to students of international law because they were a major step in establishing a new and unusual form of international status. They are interesting to students of American strategic affairs because they were a necessary step in defining the American status in a part of the world that was the scene of major fighting in World War II and remains today an area of considerable strategic significance in the Pacific. They are interesting to students of political, social, and economic development in the third world because they came after centuries of foreign rule, first by Spain, then by Imperial Germany, then by Imperial Japan, and culminating in American trusteeship in the decades from the mid-1940s to the mid-1980s.

The present writers, however, are concerned mainly with the conduct of elections in democratic polities. We have analyzed both general elections for public offices and referendum elections on specific issues in over thirty developed Western-style countries,[2] but we have never before had the opportunity to observe elections conducted in conditions as unusual and demanding as those surrounding the 1983 Micronesian plebiscites. It is therefore not surprising that we eagerly seized the opportunity to make this study when it was presented to us.

The special circumstances of these plebiscites will be described in detail in the pages to come. We will note here only that we thought they were unique until we read the account by J.-H. Hamel, the chief electoral officer of Canada, of the conduct of elections among the Indians and Eskimos of his country's Northwest Territories. As Hamel describes them, those elections have to cope with the following unusual and difficult problems:

$Very small electorates divided into tiny communities separated from one another by vast distances.

$Native cultures built mainly on oral rather written communications.

$Many different native languages and cultures.

$A severe climate and a subsistence economy.[3]

Micronesia's climate is hot and humid rather than sub-arctic, and its peoples are scattered over vast expanses of ocean rather than tundra; but in most respects, as we shall see, Micronesia's electoral problems are similar to those in Canada's Northwest Territories. And the fact that in both areas those problems have been handled quite well is a matter of both interest and encouragement for observers like Hamel and ourselves.

A word about the circumstances of and participants in the study reported here. In 1982 the United States Information Agency made a grant to the American Enterprise Institute for the purpose of studying the 1983 plebiscites and engaging in seminars and other discussions with Micronesian political leaders, public officials, and journalists about them. The present writers served as the project's co-directors, and we assembled an international roster of the following scholars to work with us:

David Butler, Nuffield College, Oxford University
Alan C. Cairns, University of British Columbia
Eugene C. Lee, University of California, Berkeley
Richard G. Smolka, The American University
Raymond E. Wolfinger, University of California, Berkeley

The roster of scholars was divided into teams, and the teams made the following visits to the three polities:

1. Republic of Palau
   Howard Penniman and Richard Smolka, October 1-8, 1982
   Howard Penniman and Richard Smolka, November 18-27, 1982
   Alan Cairns, Howard Penniman, and Richard Smolka, February 3-16, 1983
2. Federated States of Micronesia
   Eugene Lee and Austin Ranney, to Ponape and Truk, February 14-22, 1983
   Eugene Lee to Yap, Truk, and Ponape; Richard Smolka to Ponape; Raymond Wolfinger to Truk and Ponape; Austin Ranney to Ponape, June 17-25, 1983
3. Republic of the Marshall Islands
   Austin Ranney and Raymond Wolfinger, to Majuro and Kwajalein, November 11-21, 1981
   Richard Smolka, to Majuro, August 8-14, 1983
   Howard Penniman and Richard Smolka, to Majuro, September 1-11, 1983
   Austin Ranney and Raymond Wolfinger, to the East-West

Center, University of Hawaii, and to Kwajalein,
September 1-11, 1983

David Butler, to Kwajalein and Majuro, September 1-11,
1983

A further word about partisanship. Our observers' scholarly inclinations and the terms of our grant led us to focus on the quality of the elections, not upon the merits or demerits of the Compact of Free Association. Most observers of most elections probably develop some preference for one side or another, and no doubt we were no exception. So far as the present writers could tell from the few and fragmentary remarks our scholars made on the subject, however, we were divided on the question of how we would have voted had we been Micronesians). In any event, like all scholars of elections, we know that properly-conducted elections do not guarantee good results, however defined; and how the Micronesians managed their plebiscites and why they voted as they did were our concerns, not which sides had the best causes.

The purpose of this report is to set forth in some detail our observations and conclusions about the conduct and significance of the plebiscites. In writing the report we have been greatly assisted by the special help of Alan Cairns for the chapter on Palau, Eugene Lee for the chapter on the Federated States of Micronesia, and Richard Smolka for the chapter on the Marshall Islands. We are also deeply grateful to E. C. Downs and Donald Hannaford of the Department of the Interior's office of Territorial and International Affairs, who guided us skillfully through Micronesia's physical, cultural, and political geography; and to

Dr. Gregory Winn of the United States Information Agency, who administered our grant with energy and attention. It should be clear, however, that we wrote this report and are solely responsible for its contents. Our colleagues provided many of its materials and insights, but they are not responsible for the final product.

Austin Ranney and Howard R. Penniman

Washington, D.C.
June 1984

Footnotes for the Preface

1. The term "plebiscites" is sometimes used as synonymous with "referendums" -- that is, elections in which voters vote directly upon questions of public policy rather than indirectly by choosing the public officials who decide the questions: see David Butler and Austin Ranney, eds., Referendums: A Study in Practice and Theory (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1978), ch. 1; and Jean-Marie Denquin, Referendum et Plebiscite (Paris: Librairie generale de droit et de jurisprudence, 1976). We are here following Denquin's usage, which considers a "plebiscite" to be a particular kind of referendum in which the voters of a jurisdiction vote directly upon its international and legal status -- as was the case in the three Micronesian polities in 1983.

2. The American Enterprise Institute's "At the Polls" series, under the general editorship of Howard R. Penniman, has published over twenty volumes on the conduct of general elections in major democratic countries, including Australia, Canada, France, Greece, Ireland, Israel, Italy, Japan, New Zealand, Spain, Switzerland, the United Kingdom, and Venezuela. In addition, David Butler, Howard R. Penniman, and Austin Ranney edited Democracy at the Polls (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1981), a cross-sectional study of candidate elections in twenty-eight demopcratic countries. Austin Ranney has edited volumes on the 1980 and 1984 American national elections. And AEI has published several volumes on referendums: Butler and Ranney,

Referendums; Anthony King, Britain Says Yes: The 1975 Referendum on the Common Market (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1977); and Austin Ranney, ed., The Referendum Device (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1981).

3. J.-H. Hamel, "Native Participation in Free Elections: The Case of the Northwest Territories (Canada)," Electoral Studies, 2:149-154, 1983.

Chapter 1

Prelude to the Plebiscites

Geographers generally include in the area of the Pacific Ocean labeled "Micronesia" (meaning "tiny islands") the islands and atoll chains of the Marianas, Palaus, Carolines, Marshalls, and Gilberts spread over a large area of the central Pacific bounded by Hawaii on the East, the Philippines on the West, Japan on the North, and New Guinea and the Solomon Islands on the South. The area covers over 7.8 million square kilometers of ocean and includes more than 2,100 land masses ranging from relatively large and hilly volcanic islands, such as Ponape and Truk, to small and flat coral islands, such as Jaluit and Enewetak. Taken together, these islands have a combined land area of only about 1,850 square kilometers and only about 100 of the islands are inhabited. The total population of the area is estimated at 133,000, although it is growing at the rate of 3.6 percent per year -- one of the highest growth rates in the word, and the source of many of Micronesia's problems.

As David Butler sums it up, Micronesia is "a vast scattering of islands that spreads. . .over an area larger than Europe but with a land mass smaller than Wales and a population smaller than Oxford's."[1]

The subjects of this report are the plebiscites held in three Micronesian polities in 1983: the Republic of Palau on February 10, the Federated States of Micronesia on June 21, and the Republic of the Marshall Islands on September 7. As we shall see, in some respects the conditions in all three plebiscites were much the same, but in other respects they were quite different. Accordingly, before we focus on the specifics in each of the three elections we will briefly sketch the nature of the Micronesian peoples and polities and the issues they faced in 1983.

Some General Characteristics of Micronesia

1. Economic Dependence. The Micronesian peoples and polities share certain physical, historical, economic, and cultural characteristics that shape their political processes. One of the most important is their continuing economic dependency. At least since the time of the Japanese suzerainty (c. 1914 to 1944; see below), each of the Micronesian polities has bought many more goods made by outside producers than it has sold locally-produced goods to outside buyers. Throughout the period of the American trusteeship (c. 1946 to the present; see below), the continuing great differences between income and outgo have been made up by money provided by the United States. U.S. aid has come in many forms: direct block grants to the Micronesian governments; categorical grants for particular social programs, such as housing, public health, medicare and medicaid, food stamps, head start, education, and the like; capital improvement grants for projects such as roads, airfields, satellite communications, dredging and harbor improvements, shipping, agricultural research, pest control, sanitation, and public works. The importance of this aid to the Micronesians' presnt way of life is dramatized by the fact that since the mid-1940s the United States has often provided over 90 percent of all revenues received by the Micronesian governments, and its annual contributions have never fallen below 80 percent; local taxes have provided the rest.[2]

The Micronesian governments have, with U.S. assistance, launched a number of projects to develop such leading local enterprises as copra, fishing and the leasing of fishing rights, canning, forestry, agriculture, and tourism. They have sought investment by foreign investors, not only from the United States but also from other nations, notably Japan.

Most observers believe that, while significant economic progress can be and is being made, it will be decades before any of the Micronesian polities will even approach economic independence. Until then their only alternative to returning to a kind of stone-age subsistence-level standard of living is the continued infusion of large amounts of economic aid from outside. As we shall see, the substantial economic aid to be provided by the United States to the Micronesian governments under the terms of the Compact of Free Association is scheduled to run for a period of fifteen years after the Compact goes into effect, but no one can say with confidence that it will not be needed after that. This dependence, as we shall see, played a major role in the negotiations of the Compact and in the decisions of Micronesian voters in 1983 about whether or not to approve it.

2. The Traditional Social Structure. Each of the Micronesian polities, as we shall see, has a Western-style constitutional government with elected legislators and executives, appointed judges and administrators, one-person-one-vote elections, and plenty of opportunties for the free public expression of political preferences in meetings, pamphlets, posters, newspapers, and radio and television broadcasts. Yet underlying and permeating the Western forms of each polity is its traditional hierarchical social structure.

The social structure of the Marshall Islands offers a good illustration. Beyond the immediate family, the basic social unit for every Marshallese is a small group of people living in his or her area, a group similar in size and solidarity to the tribes in other traditional societies. At the base of the group are the dri jerbals, the workers or ordinary people. They have a common allegiance to a particular alab, the chief of the small local unit. A number of alabs in an area are loyal to an iroij, who is the chief for a larger area. At the top of the hierarchy stands an iroij laplap, a chief of chiefs, who is the acknowledged head of a large number of groups and the areas they inhabit.

Traditionally the people in the smaller and larger groups look to their alabs and iroij for guidance on many matters, including political decisions. Often when it becomes known that the iroij is in favor of a particular course of action -- say, for example, approving the Compact of Free Association -- most of his followers will vote that way. It is important to understand, however, that the influence of the iroij does not rest on coercion or sanctions. Rather it stems from the desire of his people to be aided in making a decision on a complicated question by advice from someone whose wisdom and reliability they have been reared to trust.

The constitutions of all three polities have provisions intended to preserve the traditional social structures and procedures. The Republic of the Marshall Islands has, in addition to its elected Nitijela (parliament), a Council of Iroij composed of the twelve acknowledged iroij in the republic. The Council considers all bills affecting customary law and land tenure, and is authorized to request changes if it feels a bill is violating traditional ways. The Nitijela has the legal power to pass any bill it wishes over the Council's objections, but it is in fact unlikely to do so when those objections are strong.

The Constitution of Palau establishes a Council of Chiefs to advise the elected president of the Republic on matters concerning traditional laws and customs. Its power is advisory only, but no president is likely to ignore any strong recommendations the Council makes on matters of its special concern.

Article V of the Constitution of the Federated States of Micronesia provides that nothing in it "takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at any level of government." It also authorizes the Congress to establish a Chamber of Chiefs "when needed." The Congress has not yet done so, but the chiefs continue to play an important role in the making of political decisions, including the decision on the Compact of Free Association (see Chapter 3).

Some of the traditional leaders have chosen to participate in the new Western-style governments by running for office or holding appointive positions. For example, Amata Kabua, an iroij, has been elected president of the Republic of the Marshall Islands, and the Ibedul (paramount chief) Yutaka Gibbons has been elected governor of the state of Koror in the Republic of Palau and was one of the leaders of the organized opposition to the Compact (see Chapter 2). Most traditional leaders, however, have been content to stay out of the new Western-style public politics and to continue their traditional roles. Their leadership, as we shall see, had a major impact on the voting in all three 1983 plebiscites. And AEI's scholars concluded that one of the most striking of the plebiscites' special characteristics was the complicated interweaving of the Western-style campaigns and elections with the quiet but powerful influence of the traditional leaders.

3. The Oral Tradition. A third important characteristic is the Micronesians' traditional reliance on oral rather than written communications. Illiteracy has been largely eradicated, especially among young people, in recent decades. Even so most Micronesians of all ages continue to rely more on personal conversations among family members and friends and between traditional chiefs and followers than on newspapers, magazines, letters, or other forms of written communication -- including, as we shall see, printed translations of the long and legalistic Compact of Free Association.

4. The Importance of Land Rights. Given the fact that Micronesians live their lives on small dots of land scattered across vast expanses of ocean, it is not surprising that the right to live on, cultivate, and otherwise use a particular piece of land is their prime material value and their first political consideration. As A. John Armstrong puts it:

> "Land in Micronesia is. . .so intimately linked to local politics, economic development and societal ties that the former cannot be separated from the latter. Micronesians identify with their land in a way not known in most Western societies, and Micronesian concepts of land ownership bear scant relationship to those of the United States. For example, a Yapese takes his name, his standing in society and his political power from a tract of land entrusted to him at birth."[3]

As future chapters make clear, issues of the ownership and control of land played major roles in all three 1983 plebiscites. The greatest concern of most Micronesians was what would happen to the U.S. power of eminent domain. Under the trusteeship system the United States, as the administering authority, exercised a power of eminent domain similar to the power it held in its own territories: it had the power to take private land for public use, such as military bases, schools, and the like, restricted only by the obligation to pay the owner fair compensation. To many Micronesians this power, which struck at the very core of their social structure, was the worst part of the trusteeship relationship with the U.S., and they wanted to be sure that it would not continue when the trusteeship was terminated. There were also some special problems. For example, the United States rented land on Kwajalein atoll for the operation of its missile-testing range, and the Micronesian owners of land rights for the sites wanted to be paid high rents and guaranteed that the leases would be renegotiated frequently (see Chapter 4). Also, a number of Palauans were concerned about the possibility that the United States might use Palauan land to construct military facilities, store and transship nuclear materials, and build a super-harbor for oil super-tankers (see Chapter 2). For the Micronesians these issues were more than merely economic; they touched the very heart of what Micronesians believe are their most basic rights, and it is not surprising that they aroused more controversy than any other issues.

5. A Common History of Foreign Rule. Finally, the Micronesians have had a common history of unbroken rule by foreigners since the Sixteenth Century. Spanish and Portugese explorers first entered the area in that century, and from then until the late Nineteenth Century sovereignty over most of the lands and peoples was claimed by Spain.

In 1898 the United States acquired Guam as a result of the Spanish-American war, and in 1899 Spain sold its remaining Micronesian territories to Imperial Germany. Early in World War I Japan captured the German-held islands, and in 1920 the League of Nations gave the Japanese Empire a mandate to administer the Caroline, Marshall, and Northern Mariana islands. From then until the early 1940s the Japanese sent a number of settlers to the islands, developed a number of economic enterprises, and made a considerable effort to introduce new and more modern ways of doing things. They also secretly, and in gross violation of the terms of their League mandate, fortified a number of the islands in preparation for their drive to establish the "greater East Asia co-prosperity sphere." In a series of bloody battles in World War II the armed forces of the United States captured most of the islands and atolls from Japan. And in 1947 the United Nations proclaimed most of Micronesia to be "a strategic trust territory" under the aegis of the Trusteeship Council. It was officially named the Trust Territory of the Pacific Islands, and the United States was designated the administering authority.

Accordingly, an important question in the 1983 plebiscites was whether accepting the Compact of Free Association with the United States would truly end the centuries of foreign rule of Micronesia and bring its peoples full nationhood or something closely approaching it.

The Micronesian Polities in 1983

While they have many important characteristics in common, Micronesians are also very diverse. For example, at least nine distinct languages are spoken in the area, most with a number of dialects. Koror in the east is separated from Majuro in the west by 2,450 miles of ocean. What is more, the rents received by the Kwajalein landowners are of little concern to the inhabitants of Koror, the question of whether a base for nuclear submarines should be built in Palau is of little conern to the residents of Majuro, and the question of whether the Faichuks should be independent of Truk stirs little discussion in Jaluit. Most important of all, the events of the 1970s and 1980s made it clear that there is little if any area-wide sense of cultural or political identity that can be described as "Micronesian nationalism" and little political activity that can be called "Micronesian solidarity." Quite the contrary. The geographical area called "Micronesia" has, in accordance with the wishes of its various peoples, become divided into the following four separate and distinct political entities, three of which held plebiscites in 1983:

1. The Commonwealth of the Northern Mariana Islands.[4] The Commonwealth of the Northern Mariana Islands consists of a group of sixteen islands, of which the most important are Saipan, Tinian, and Rota. The capital is located on Saipan. Taken together, these islands have a total land mass of 479 square kilometers, and the population is estimated to be about 16,800. The official language in addition to English is Chamorro.

In the early 1970s a number of political leaders in the Northern Marianas decided that they wanted a closer post-trusteeship relationship with the United States than the Trust Territory's other jurisdictions appeared to want, so they asked that their future status be negotiated separately from the others. The United States granted their request. In a 1975 plebiscite the people of the Northern Marianas voted, by a majority of 78.5 percent, to become a U.S. "commonwealth" -- a status similar, but not identical, to that of Puerto Rico. That status was approved by the U.S. Congress and went into effect in 1976. Strictly speaking, the Northern Marianas are still part of the Trust Territory and will remain so until the trusteeship is terminated for the entire territory. Since 1976, however, they have had a larger degree of self-government than the other jurisdictions.

The Northern Marianas have a "presidential" form of democracy based upon separation of powers and modeled on the government of the United States. The legislative power is vested in the bicameral Northern Marianas Commonwealth Legislature: the Senate has nine members elected at large for four-year terms from the three senatorial districts, and the House of Representatives has fourteen members elected for two-year terms. The executive power is located in the governor, who is directly elected for a four-year term and serves as chief executive. The judicial authority rests in the Commonwealth Trial Court, which has original jurisdiction over land disputes and other civil questions. Criminal matters are adjudicated by the U.S. courts.

2. The Republic of Palau. Westernmost of the Micronesian jurisdictions, the Republic of Palau consists of more than 200 islands, only eight of which are inhabited. The total land mass is 492 square kilometers, only slightly larger than that of the Northern Marianas. Palau is divided into sixteen localities which used to have the status of municipalities but became states under the 1980 Constitution. Ten are located on the main island of Babelthuap, and the most distant are Tobi (350 miles from Koror) and Sonsorol (200 miles). The national capital is located on the island of Koror, and the largest land area is the island of Babelthuap. The total population is estimated to be

12,100, and the three official languages, in addition to English, are Palauan, Tobian, and Sonsorolese. In the 1978 referendum on the proposed constitution to unite all the Micronesian territories except the Northern Marianas under one federation (see below), the people of Palau voted to reject the proposal and form their own polity. They approved a new constitution for themselves in a 1980 referendum, and in 1981 the newly-elected government took office. It was this government that conducted the 1983 plebiscite on the Compact of Free Association.

The 1980 Palau Constitution places the legislative power in the Olbiil Era Kelulau (OEK), a bicameral legislature. The House of Delegates is composed of one delegate elected from each state, and the Senate is composed of a number of senators elected from districts apportioned from time to time by a reapportionment commission. The executive authority is vested in a president who is directly elected for a four-year term. The president of Palau, like the president of the United States, is authorized to veto bills passed by the OEK, but, as in the U.S., his veto may be overridden by a two-thirds vote in each of the OEK's two chambers. The judicial power is vested in a unified national judiciary consisting of a Supreme Court, and National Court, and some inferior courts of limited jurisdiction established by the OEK. Thus Palau, like the Northern Marianas, has a "presidential" form of democracy based upon separation of powers.

3. The Federated States of Micronesia. In both land area and population, the Federated States of Micronesia (FSM) is the largest of the four Trust Territory jurisdictions. It consists of the four districts of the Trust Territory -- Kosrae, Ponape, Truk, and Yap -- whose voters, in the 1978 referendum, approved the proposed constitution

for the Micronesia-wide federation. In its present organization each of the four states has its own constitution and elected legislature and governor. Each of the states also sends elected representatives to the one-house federal Congress, which sits in the national capital located in the town of Kolonia on the island of Ponape. Each of the states is entitled to one member elected for a four-year term, and four additional members, each elected for a two-year term, apportioned according to population. The executive power is vested in the president of the federation, who is chosen by the Congress from among its four-year members, serves a four-year term, and is limited to no more than two consecutive terms. The vice-president is elected in the same manner as the president, but may not be a citizen of the same state as the president. The FSM's judicial power is vested in a Supreme Court and in inferior courts as established by the Congress. Thus the FSM's constitutional system is something of a hybrid: the chief executive is selected by the legislature from among its own members, but once he becomes president he is no longer a member of the Congress and operates as an independent executive. Perhaps "quasi-presidential" is the best label for the FSM's system.

The total population of the FSM is about 73,200. Truk is the most populous of its states, with 37,500, followed by Ponape with 22,100, Yap with 8,100, and Kosrae with 5,500. Linguistically it is by far the most diverse of all the Micronesian polities. In addition to English the federation has eight official languages: Ponapean, Trukese, Kosraean, Yapese, Nukuoran, Kapingi, Ulithian, and Wolian. Some of its constituent parts, notably Ponape and the Faichuk Islands in Truk state, harbor strong separatist sentiments and movements which played prominent roles in the 1983 plebiscites and pose problems for the federation's future. There are territorial antagonisms within all of the Micronesian polities, but they are strongest in the FSM.

4. The Republic of the Marshall Islands. The Republic of the Marshall Islands is the easternmost of the Micronesian jurisdictions. It consists of twenty-nine coral atolls and five coral islands, which are dispersed over 970,000 square kilometers of ocean. However, their total land mass is only 180 square kilometers, the smallest of any of the four polities. The islands form two chains: the Ratak (sunrise) chain to the east and the Ralik (sunset) chain to the west. The total population is estimated to be 31,000, and the two main population centers are the atolls of Majuro (10,000) on which the capital is located, and Kwajalein, in which the most populous island is Ebeye (8,500). The official language, in addition to English, is Marshallese. On several islands in Kwajalein atoll, mainly Kwajalein, Roi-Namur, and Carlos, the United States operates the Kwajalein Missile Range (KMR) for testing intercontinental ballistic missiles launched from Vandenberg Air Force Base in California, renting the land from Micronesians who have land rights in the atoll but for the most part are residents of Ebeye. In the 1978 referendum the people of the Marshall Islands joined the people of Palau in rejecting inclusion in a Micronesia-wide political entity. In a 1979 referendum they approved a new constitution for their own area, and the newly-elected government for the Republic of the Marshall Islands took office on May 1, 1979.

The 1979 Marshallese Constitution vests legislative power in the Nitijela (parliament), which is composed of thirty-three members elected for four-year terms from single-member districts throughout the islands.

As in the FSM, the Nitijela chooses one of its own members as president, and he serves as chief executive and head of state. However, unlike the presidents of Palau or the FSM, the president of the Marshall Islands is required to resign when a majority of the Nitijela votes no confidence in him. The president also has the power under certain conditions to dissolve the Nitijela and call new elections. Thus the Marshall Islands has essentially a parliamentary form of democracy influenced more by the Westminster model than the Washington model.

These, then, are the four Micronesian polities that existed in 1983. Their emergence from the original Trust Territory districts and the political evolution leading to the 1983 plebiscites are best understood in the light of the following brief summary of developments after the end of World War II in 1945.

A Brief History of the Trust Territory of the Pacific Islands

1. Establishment and Terms. As we noted earlier, most of the islands, atolls, and peoples of Micronesia were under Japanese rule from 1914 until World War II, when they were captured, at great cost in lives and treasure, by the armed forces of the United States. In 1946 the United States agreed to place the captured Micronesian territories under the International Trusteeship System of the United Nations. In 1947 the United Nations Security Council and the United States Congress approved the Trusteeship Agreement for the Trust Territory of the Pacific Islands, which, under Article 76 of the United Nations Charter, declared the area to be a "strategic trust" with the United States as the administering authority. This particular form of trusteeship, the only one established by the UN, was created to accommodate the position of

the United States that Micronesia's strategic location makes it of special importance for the maintenance of international peace and security and thus should be treated differently from the ten other territories that were placed under the trusteeship of various UN members during the same period.

Under the 1947 Trusteeship Agreement, the United States assumed certain rights and obligations, of which the most significant were the following:[5]

(1) To "foster the development of such political institutions as are suited to the trust territory and [to] promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned."

(2) To "promote the economic advancement and self-sufficiency of the inhabitants."

(3) To "promote the social advancement of the inhabitants [and] protect the rights and fundamental freedoms of all elements of the populations without discrimination."

(4) To "promote the educational advancement of the inhabitants."

(5) To "establish naval, military and air bases. . ., to station and employ armed forces in the territory. . ., [and] to make use of volunteer forces, facilities and assistance from the trust territory in carrying out the obligations undertaken. . .by the administering authority, as well as for the local defense and maintenance of law and order within the trust territory."

2. Evolution of the Districts. From its establishment in 1947 until the mid-1970s, the Trust Territory was divided into six districts. The original districts were the Northern Marianas, the Marshall Islands, Palau, Ponape, Truk, and Yap. During most of this period the United States tried to encopurage the districts to unite in one Micronesia-wide federation with which negotiations for the area's post-trusteeship status could be conducted. That policy, however, failed under the pressures of the territory's various separationist movements.

The first crack appeared in the early 1970s when, as we noted earlier, the Northern Marianas insisted that they wanted a closer relationship with the United States than the other districts wanted, and asked not to be included in any Micronesia-wide political entity. Shortly after the Northern Marianas were given de facto commonwealth status in 1976, the island of Kosrae asked for and was given full district status, and joined Palau, the Marshalls, Ponape, Truk, and Yap as the districts whose future status was yet to be determined.

On several occasions in the 1970s the Marshallese Nitijela adopted resolutions informing the United States and the United Nations that they too wanted a status separate from that of the other districts. In 1977 the Marshalls held a plebiscite asking the people whether they approved of the movement to seek separate status, and 82 percent voted their approval.

The district of Palau also sought separation from the other districts, and in 1977 the United States finally yielded to the Marshallese and Palauan separationist sentiments by agreeing to conduct "two-tiered" negotiations on the future status of the Trust Territory districts. One tier was to be multilateral negotiations with the six districts on the matters that were common to all six — for example, defense, foreign relations, and the concept of "free association" (see below). the other tier was to be bilateral negotiations between the United States and Palau, the United States and the Marshall Islands, and the United States and the Ponape-Truk-Yap-Kosrae group.

A constitutional convention made up of delegates from each of the six districts prepared a constitution for a "federated states of Micronesia," and a referendum was held in each of the six districts on July 12, 1978 under the inspection of a team of observers sent by the United Nations Trusteeship Council. The results of the referendum are shown in Table 1-1:

(Table 1-1 about here)

The enabling legislation for the 1978 referendum stipulated that at least four of the six districts had to approve the constitution for it to go into effect at all. It also guaranteed that no district would be included in the federation if its people did not approve the proposed constitution. As Table 1-1 shows, the constitution was approved by the voters of Ponape, Truk, Yap, and Kosrae, but disapproved by the voters of Palau and the Marshall Islands. Accordingly, the first four districts became the four states of the Federated States of Micronesia, and the FSM's newly-elected officers took office in 1979.

As we noted earlier, in 1979 the Marshall Islands adopted its own constitution and installed its own government. In 1981 Palau followed suit. In this manner the original six districts of the Trust Territory and the added district of Kosrae were, by 1981, sorted out into the four political entities described above, three of which in 1983 held plebiscites on the proposed Compact of Free Association with the United States.

3. American Administration of the Trust Territory. From 1947 to 1951 the government of the United States assigned responsibility for administering the affairs of the Trust Territory to the Department of the Navy. In 1951 the main administrative responsibility was transferred to the Department of the Interior, and in 1982-1983 the principal agency supervising the territory was the Office of the Assistant Secretary of the Interior for Territorial and International Affairs. At the time of the plebiscites the assistant secretary in charge was Pedro A. Sanjuan. The chief administrative officer was High Commissioner Janet McCoy, who was appointed by the president and confirmed by the Senate, with offices located in Saipan.

Under the Trusteeship Agreement the United States has the full power of administration, legislation, and adjudication over all territories and peoples in the Trust Territory. As we shall see, however, since the mid-1970s the area's four jurisdictions have acquired considerable degrees of self-government. While the ultimate legal powers will remain with the United States until the trusteeship is terminated by the United Nations, in fact most of the functions previously performed by the office of the High Commissioner have been devlolved to the new constitutional governments of the four polities. The High Commissioner retains the power to suspend, in whole or in part, laws adopted by any of the four governments that conflict with the administering authority's responsibilities under the Trusteeship Agreement, but this power is seldom used. Accordingly, each of the three plebiscites described in this report was conducted according to the laws and administrative procedures adopted and administered by the government of the Micronesian polity concerned, not by the United States -- a point that is important to bear in mind when, in subsequent chapters, we review the conduct of the plebiscites.

4. Development of Self-Government, 1947-1983.

(a) District Legislatures. As we noted earlier, one obligation assumed by the United States under the Trusteeship Agreement has been to foster the development of political institutions in the territory leading to self-government. The United States has undertaken several efforts to that end. One of the earliest was encouraging the districts to establish their own elected legislatures to exercise the powers devolved to the districts by the U.S. -- notably, the power to make laws governing the districts' internal affairs.

The first district legislature was established by Palau in 1947, and similar legislatures were established in the Marshall Islands in 1950, Truk in 1957, Ponape in 1958, Yap in 1959, and the Northern Marianas in 1963. The legislatures of Palau, the Marshall Islands, Ponape, and Truk all appointed commissions on future status to conduct negotiations with the United States about their post-territory statuses. All the district legislatures exerted considerable power over their own internal affairs, and they also served as training grounds for many of Micronesia's future political leaders.

(b) The Congress of Micronesia, 1965-1978. The most important agency of area-wide self-government prior to the political fragmentation of the mid-1970s was the Congress of Micronesia (COM). It played a major role in the early negotiations over the future status of the Trust

Territory, and most of its leading members became leaders of the four emerging polities.

The Charter for the Congress of Micronesia was drawn up from 1962 to 1965 in discussions among representatives from the Trust Territory districts and from the Office of Territories in the U.S. Department of the Interior. An order by the Secretary of the Interior in 1965 established the Congress as a bicameral body, consisting of a Senate and a House of Representatives. The Senate had twelve members, with two elected at large from each of the six districts. The House of Representatives had twenty-one members elected for two-year terms from single-member constituencies apportioned among the districts as follows:

Truk	5
Marshall Islands	4
Ponape	4
Northern Marianas	3
Palau	3
Yap	2

The first congressional election was the first election held in the whole Trust Territory. It began on December 28, 1964 and ended on January 27, 1965. The fact that it took a solid month to cast, collect, and count all the ballots dramatically signaled the difficulties of holding an election among so few voters scattered over such vast distances. The turnout figures summarized in Table 1-2 provide a benchmark against which to compare turnouts in the subsequent elections in the area, including the 1983 plebiscites.

(Table 1-2 about here)

The 1965 turnout figures shown in Table 1-2 represent an impressive performance by the Micronesian people in their first full-scale democratic election in history. As we shall see, their participation in subsequent elections, including the 1983 plebiscites, has also been high and is especially remarkable in view of the great logistical difficulties.

Over three-quarters of the members of the Congress of Micronesia elected in 1965 and in subsequent elections (a total of seven were held in even-numbered years from 1966 to 1978) had served as members of the district legislatures, and a number became prominent figures in the post-1978 constitutional governments. For example, one of Micronesia's leading statesmen, Tosiwo Nakayama of Truk, was elected president of the COM Senate and later became president of the Federated States of Micronesia. Amata Kabua of the Marshall Islands became chairman of the COM House of Representative's Committee on Ways and Means and later became president of the Republic of the Marshall Islands. Bethwel Henry of Ponape became secretary of the COM House of Representatives and later the speaker of the FSM Congress.

The Charter of the Congress gave the COM full authority over "all rightful subjects of legislation, except that no such legislation may be inconsistent with (a) treaties or international agreements of the United States, (b) laws of the United States applicable to the Trust Territory, or (c) sections 1 through 12 of the Code of the Trust Territory." The High Commissioner retained the power to veto any act of the Congress deemed to transgress these limits, but the power was rarely used.

The Congress of Micronesia first convened on July 12, 1965, and for the next decade it was the main agency of local self-government for the

Trust Territory as a whole. Moreover, one of its committees played a major role in the long series of negotiations leading to the Compact of Free Association with the United States, approval or disapproval of which was the issue in the 1983 plebiscites.

By order of the Secretary of the Interior on October 2, 1978, the Congress of Micronesia was dissolved and its powers were assumed by the legislatures of Palau, the FSM, and the Marshall Islands.

3. Evolution of the Compact of Free Association, 1969-1983. On August 8, 1967 the Congress of Micronesia established a Joint Committee on Future Political Status, with one representative from each Trust Territory district, and Lazarus Salii, a member of the COM House of Representatives from Palau, as chairman. The commission's final report, issued in July 1969, became the first major event in the evolution of the Compact of Free Association. The report recommended that the future status of the Trust Territory should be governed by four precepts: (1) sovereignty in Micronesia should rest in the Micronesian people and their duly constituted government or governments; (2) the people of Micronesia by right have the power of self-determination and may, therefore, choose independence or self-government in free association with any nation or organization of nations; (3) the people of Micronesia have the right to adopt their own constitution and amend, change, or revoke any constitution at any time; and (4) free association should take the form of a revocable compact that can be terminated unilaterally by either party.

The commission's report launched serious negotiations between the Micronesian leaders and representatives of the United States. They began in 1969 and ended thirteen years later when, in 1982, the United

States and the Marshall Islands (May 30), the United States and Palau (August 26), and the United States and the Federated States of Micronesia (October 1) signed the Compact of Free Association and various related agreements, and agreed to hold plebiscites in each of the three polities in 1983 to see if their peoples approved the terms negotiated by their governments. In December 1982 the Trusteeship Council of the United Nations agreed to send visiting missions to observe each of the three plebiscites.

The story of the thirteen years of negotiations leading up to the events of 1982-1983 is far too complex to be told in detail here, but a few of the highlights should be noted.

In the beginning stages in 1969-1970 the United States offered the districts the post-trusteeship status of being U.S. territories, but the Micronesians rejected it. Their principal objection was that such status would continue the United States' power of eminent domain over Micronesian land, and securing Micronesian control of Micronesian land was and remains, and we have seen, a prime value for the Micronesians.

The United States then offered commonwealth status along the general lines established for Puerto Rico. This was welcomed by the Northern Marianas but rejected by the other districts. In 1971 the U.S. and Micronesian negotiators agreed upon the principle of "free association," which in general contemplated that Micronesians would have full authority over their own internal affairs, including the control of land rights, while the United States would retain authority over defense matters and would undertake continuing economic support of Micronesia.

In 1975, as we noted earlier, the district of the Northern Marianas voted to separate itself from the other Trust Territory districts and to enter into a Covenant to Establish a Commonwealth of the Northern Marianas Islands in Political Union with the United States of America. The Covenant was approved by the Northern Marianas voters in a plebiscite observed and approved by representatives of the United Nations Trusteeship Council. It was enacted into law by the U.S. Congress in 1976 and went into force on January 9, 1978.

The negotiations between the United States and the remaining Trust Territory districts (which became six again in 1977 when Kosrae was given district status) followed a tortuous path during much of the 1970s. One breakthrough came in 1973 when the United States agreed that all Micronesian public lands would be transferred to local control and the U.S. power of eminent domain would end when the trusteeship was terminated. There continued to be disagreements about the level of funding which the United States would guarantee to the districts after the end of the trusteeship, and there were also disagreements about such matters as U.S. liability for injuries to individuals resulting from their relocation and from fallout generated by the text explosions of nuclear weapons in parts of the Marshall Islands in 1951.

After 1977, as we have seen, the United States reluctantly accepted the political fragmentation of Micronesia into four separate jurisdictions and agreed to conduct "two-tiered" negotiations. Perhaps the most important breakthrough of all came in meetings held in Hilo, Hawaii in 1978 when the Micronesian and American negotiators agreed on eight basic principles that would shape the nature of the eventual compacts of free association. For present purposes the most important of the principles were the following:

§The peoples of Micronesia will enjoy full internal self-government.

§The United States will have full authority and responsibility for security and defense matters in or relating to Micronesia, including the establishment of necessary military facilities and the exercise of appropriate operating rights. The peoples of Micronesia will refrain from actions which the United States determines, after appropriate consultations, to be incompatible with its authority and responsibility for security and defense matters in or relating to Micronesia. This authority and responsibility will be assured for fifteen years, and thereafter as mutually agreed. Specific land arrangements will remain in effect according to terms which will be negotiated prior to the end of the Trusteeship Agreement.

§The peoples of Micronesia will have authority and responsibility for their foreign affairs, including marine resources. They will consult with the United States in the exercise of this authority and will refrain from actions which the United States determines to be incompatible with its authority and responsibility for security and defense matters in or relating to Micronesia. The United States may act on behalf of the peoples of Micronesia in the area of foreign affairs as mutually agreed from time to time.

§The agreement will permit unilateral termination of the free association political status by the same processes through which it was entered and set forth in the agreement, and subject to the continuation of United States defense

> authority and responsibility; but any plebiscite terminating the free association status will not require observation by the United Nations.
>
> §Should the free association status be mutually terminated, the United States economic assistance shall continue as mutually agreed. Should the United States terminate the free association relationship, its economic assistance to Micronesia shall continue at the levels and for the term initially agreed. If the agreement is otherwise terminated, the United States shall no longer be obligated to provide the same amounts of economic assistance for the remainder of the term initially agreed.[6]

On the basis of the Hilo Principles, a compact of free association and a set of related agreements were worked out for each of the three jurisdictions. Approval of those compacts and related agreements constituted the questions voted on in the 1983 plebiscites.

6. An Outline of the Compact of Free Association. Before considering the Compact of Free Association in some detail, it may be useful to note A. John Armstrong's succinct statement of its essential principles:

> "Free association differs from independence in that one of the parties to the bilateral agreement willingly binds itself, by its own constitutional processes. . .to cede to the other a fundamental sovereign authority and responsibility for the conduct of its own affairs. Specifically, this distinction is exemplified by the reservation to the United States of plenary defense authority (as contrasted with treaty rights

to exercise certain defense functions), and the ensuing limitation on Micronesian freedom of action. Free association is distinguished from integration into a metropolitan power by the retention by the freely associated government of the power to assert itself domestically and internationally without reference to the legal authority of another state.[7]

To set forth the main provisions of the Compact, we shall use the one signed by the United States and the Federated States of Micronesia and approved by the people of the FSM in the plebiscite of June 21, 1983. That Compact is a long and complex document. It has a total of four titles and twenty-four articles, and the version printed in the English language occupies a total of 243 single-spaced pages. Accordingly, we shall present only an outline of its main provisions:

Title One: Governmental Relations

The people of the Federated States of Micronesia, acting through the Government established by their Constitution, are self-governing. The FSM retains full authority over its internal affairs. The government of the FSM has the capacity to conduct foreign affairs and shall do so in its own name and right, including entering into treaties and other international agreements with governments and regional and international organizations. The FSM government will consult with the government of the United States on any matter of foreign affairs which affects defense and military matters. Any citizen of the FSM can enter the United States and reside and work in the FSM for a period of more than one year. Citizens of the FSM are not citizens of the United States. United States laws cease to have effect in the FSM when the Compact goes into effect.

Title Two: Economic Relations

The United States government agrees to pay to the government of the FSM $60 million annually for five years commencing on the effective date of the Compact, $51 million annually for the succeeding five years, and $40 million annually for the five years after that — for a total of $755 million over the fifteen years. The FSM agrees to spend not less than 40 percent of this money on economic development. The division of funds among the four states of the FSM will be made by the FSM national government. The FSM will report to the president and Congress of the United States annually on how the FSM's development plan is being implemented and on how the development funds are being spent. Additional annual contributions will be made by the United States for such additional purposes as the development of communications, scholarships, operation of U.S. military and meteorological stations, and the like. The FSM government may tax any U.S. citizen for income derived within the FSM. The U.S. government may not tax FSM citizens for income derived in the FSM, but can tax them for income derived in the U.S.

Title Three: Security and Defense Relations

The United States has full authority and responsibility for security and defense matters in or relating to the FSM. This includes an obligation to defend the FSM, an option to foreclose access to the FSM for military forces of a third country, and an option to establish or use military facilities and conduct military operations in the FSM, subject to certain agreed limitations. The FSM agrees to refrain from activities which the U.S., after consultation with the FSM, determines to be incompatible with defense. Testing of nuclear weapons, dumping of nuclear or radioactive wastes, and storage of nuclear weapons or other nuclear materials are prohibited except in emergencies and by mutual agreement between the U.S. and the FSM. A joint committee of the U.S. and the FSM will be established to consider any disputes arising under this title and subsidiary agreements. Any citizen of the FSM is eligible to serve in the U.S. armed forces, but is not subject to any military draft by the U.S. The U.S. cannot include the FSM in any declaration of war without the FSM's consent. The provisions of this title are binding from the effective date of the Compact for a period of fifteen years and thereafter as mutually agreed unless terminated or amended earlier by mutual agreement.

Title Four: General Provisions

The Compact will take effect on a date agreed to by the United States and the FSM after the completion of three steps: (1) approval by a majority of the people of the FSM voting in a plebiscite; (2) approval by the constitutional processes of the FSM, including approval by the legislatures of at least three of the four states and approval by a two-thirds vote of the FSM Congress; and (3) approval by the United States through its constitutional processes, including the adoption of appropriate laws by the Congress and signature by the president. An arbitration board will be established to deal with disputes arising under Titles One, Two, and Four. The Compact can be terminated by the United States by Act of Congress signed by the president. The Compact can be terminated by the FSM Congress after a plebiscite approving termination.

The Related Agreements

The people of the FSM voted to approve or disapprove the Compact of Free Association "and its related agreements." The contents of those agreements are indicated by their titles:

1 and 2: Telecommunications
3: Marine Sovereignty
4. Law Enforcement and Extradition
5. Federal Programs and Services
6. Property Transfer
7. Military Use and Operating Rights
8. Status of Forces
9. Friendship, Cooperation and National Security

The Importance of the Plebiscites

One final point should be noted about the Compact of Free Association and the processes by which it was negotiated. The one matter on which all participants agreed from beginning to end was that any post-trusteeship status negotiated for any of the Trust Territory's districts must accord with the freely-expressed wishes of the people concerned -- a phrase that occurs over and over again in the position papers and other documents of the negotiations. That principle, it was further agreed, would be implemented in two ways: First, the negotiations for each Micronesian polity would be conducted by persons chosen by and answerable to the freely-elected government of that polity. Second, whatever status was negotiated and approved by the government of each polity would have to be approved by a majority of its voters in a free and democratic plebiscite. That is why the United Nations Trusteeship Council sent teams of observers to observe every major plebiscite from the one on the establishment of commonwealth status for the Northern Marianas in 1975 to the three plebiscites on the Compact of Free Association and related agreements in 1983.

We turn now to descriptions and analyses of the laws, administrative rules, politics, outcomes, and consequences of the plebiscites as they were conducted in February, June, and September of 1983.

Footnotes for Chapter 1

1. The Times (London), September 14, 1983.

2. For details, see the annual reports of the Trust Territory of the Pacific Islands to the United States Secretary of the Interior.

3. "The Emergence of the Micronesians into the International Community: A Study of the Creation of a New International Entity," Brooklyn Journal of International Law, Vol. 5 (1979), pp. 211-227, at pp. 218-219.

4. Useful brief descriptions of the constitutional systems of the Micronesian polities are given in Outline of Conditions in the Trust Territory of the Pacific Islands (UN document T/L. 1235, 1983), pp. 8-16.

5. The text is printed in 1983: Trust Territory of the Pacific Islands (Washington, D.C.: Thirty-sixth Annual Report by the United States to the United Nations on the Administration of the Trust Territory of the Pacific Islands, 1983), pp. 215-218.

6. The Hilo principles are printed in Armstrong, "The Emergence of the Micronesians," at pp. 269-261,

7. Arthur John Armstrong, "Strategic Underpinnings of the Legal Regime of Free Association: The Negotiations for the Future Political Status of Micronesia," Brooklyn Journal of International Law, Vol. 7 (1981), pp. 179-233, at p. 182.

Table 1-1

Results of the 1978 Referendum on the Proposed All-Micronesia Federation Constitution

District	Registered Voters	Votes Cast	Turnout Percent	Percentage Voting Yes	No
Marshall Islands	12,996	10,105	77.8	38.5	61.5
Palau	6,500	6,059	93.2	44.9	55.1
Ponape	11,177	7,990	71.5	74.7	25.3
Truk	17,736	14,001	78.9	69.7	30.3
Yap	4,650	3,545	76.2	94.8	5.2
Kosrae	2,182	1,822	83.5	61.4	38.6
Totals	55,241	43,522	78.8	61.6	38.4

Source: *Report of the United Nations Visiting Mission to Observe the Referendum in the Trust Territory of the Pacific Islands, 1978* (UN Document T/1795, 1979), p. 57

Table 1-2

Turnout in the 1965 Elections for the Congress of Micronesia

District	Estimated Number of Persons Eligible to Vote	Number of Persons Voting	Percent Turnout
Truk	12,255	5,373	43.8
Ponape	9,200	5,637	61.3
Marshall Islands	8,000	4,218	52.7
Palau	4,654	3,711	79.7
Northern Marianas	4,104	3,356	81.8
Yap	3,290	2,767	81.4
Trust Territory Total	41,503	25,062	60.4

Source: Norman Meller, The Congress of Micronesia (Honolulu: University of Hawaii Press, 1969), p. 271.

Chapter 2

The Plebiscite in the Republic of Palau

In late 1982 and early 1983, the plebiscite in the Republic of Palau received special attention for several reasons. For one thing, it was the first held, and officials in New York and Washington as well as in Ponape and Majuro hoped to used Palau's experience to alert them to problems and possibilities in holding such elections that would be useful in the later plebiscites in the FSM and the Marshall Islands. For another thing, some partisans hoped that a win for the Compact in Palau would, by some kind of transoceanic bandwagon effect, boost its chances in the FSM and the Marshalls -- and other partisans hoped that defeating it in Palau would make it easier to defeat elsewhere. Moreover, from the late 1960s on (see Chapter 1) one of the most prominent Micronesian spokesmen in the negotiations with the United States about the Compact's terms had been the Palauan senator Lazarus H. Salii, and holding the first plebiscite in his home territory seemed not only appropriate but perhaps also indicative of how the political trade wind was blowing.

In the event, Palau's plebiscite was indeed noteworthy, but for somewhat different reasons. At almost every stage of the process, as we shall see, there was strong and often acrimonious controversy. A good many non-Palauan organizations and individuals in addition to the Americans were active in funding and organizing campaigns. The outcome was an unusual and, to many, vexing mixture of a reasonably strong majority for most of the Compact and a narrow -- and constitutionally insufficient -- majority for the section on the storage and transshipment of nuclear weapons. And an interpretation of the results by Palau's Supreme Court made Palau the only one of the three jurisdictions that did not ratify the Compact.

It is an absorbing story, and we shall tell it in some detail

AEI's team of scholars for the plebiscite in the Republic of Palau was composed of Alan Cairns, Howard Penniman, and Richard Smolka. Penniman and Smolka went to Palau on October 1-8, 1982, and again on November 18-27, 1982. All three went to Palau on February 3-16, 1983.

During the first two visits the scholars engaged in discussions with the Palauan officials mainly responsible for the conduct of the political education program and the conduct of the plebiscite. They included Daiziro Nakamura, Director of the Bureau of Domestic Affairs, who served as the chief administrator for the plebiscite; Bonifacio Basilius, Chief of the Division of Public Affairs, who was especially concerned with the political education program; and Mamoru Nakamura, the Chief Justice, who made some important rulings concerning the wording of the ballot (see below).

A second set of discussions was held with leaders of the government, who had negotiated the Compact and generally supported it. These included President Haruo Remeliik and Vice President Alfonso Oiterong, Ambassador Lazarus E. Salii, Acting Chief Reklai Termeteet, and Carlos H. Salii, the speaker of the lower house of the Olbiil Era Kelulau (OEK -- the Palauan Congress).

A third set of discussions was held with the leaders of the opposition to the Compact, mainly Senators Moses Uludong, Johnson

Toribiong, and Joshua Koshiba, and the Ibedul, Yutaka Gibbons, the governor of the state of Koror.

The AEI scholars also met with the chiefs and other officials of six villages on the east side of the main island of Babelthuap, traveling from point to point by boat because ground transportation was too difficult. They attended a number of meetings in which representatives of the political education program held discussions with the villagers on the provisions, merits, and demerits of the Compact. Perhaps the most interesting of these meetings was one conducted in Koror by the Ibedul, Yutaka Gibbons, who is not only the governor of the state of Koror but also the paramount chief in the traditional social structure. All the lesser chiefs in the Ibedul's clan attended, the Ibedul made clear his strong opposition to the Compact, and the other chiefs all publicly supported his position. The AEI scholars' guide, a young man who had studied at the University of Arkansas, was the son of one of the lesser chiefs. The father was a strong supporter of the Compact, but at the meeting he publicly supported the Ibedul's position. He later explained that when one is a guest of the high chief one must not insult him by publicly taking an opposing position. This was one of many incidents manifesting the importance of the traditional chiefs in the discussions and voting, a pattern that, as we shall see, was significant not only in Palau but in the FSM and the Marshall Islands as well.

Preliminaries to the Plebiscite

1. Palauan Separatism.[1] Palauan separatism first surfaced in 1973 when the legislature of the Palau district of the Trust Territory adopted several resolutions calling for a status separate from that of

other parts of Micronesia. On July 8, 1975 an advisory referendum was held in all parts of the Trust Territory on the people's wishes for the post-trustreeship status of Micronesia. The voters were asked to express their preferences for alternatives including independence, commonwealth, statehood, free association, or a continuation of the trusteeship. Palauan voters voted 1,288 for continuing the trusteeship and 1,120 for free association.

Though the vote was extremely close, the Palauan legislature evidently felt that it was a sufficient indication of sentiment for separate treatment to go ahead with a second referendum on whether Palau's future status should be determined by negotiations with the United States separate from those being conducted with other parts of Micronesia. The referendum was held on September 24, 1976, and 88.5 percent of the voters voted in favor of separate negotiations, while only 11.5 percent voted for unified negotiations.

The next step came in the July 12, 1978 referendum on the proposed constitution for a federated government for Palau and the other Trust Territory districts (see Chapter 1). Palauans voted 2,720 (44.9 percent) for the constitution and 3,339 (55.1 percent) against it. The defeat of the constitution in Palau and in the Marshall Islands, as we have already noted, led the United States to accept the principle of separate, two-tiered negotiations, and since then Palau has been accorded a status separate from that of Micronesia's other jurisdictions.

A Palauan constitutional convention then drafted a proposed constitution for the Republic of Palau, providing for a president directly elected by the people for a four-year term, a separate two-house Congress (the OEK -- see above), and an independent appointed judiciary -- in short, a "presidential system" modeled upon that of the United States rather than the "parliamentary system" adopted by the Marshall Islands. In a referendum held on July 9, 1979, Palau's voters voted 4,023 (92.0 percent) in favor of the proposed consitution to 349 (8.0 percent) against. The officials elected and appointed under this new constitution prescribed and administered the rules under which the 1983 plebiscite was conducted.

2. The Draft Compact and Agreements. The draft Compact of Free Association and related agreements between the Republic of Palau and the United States of America was initialled by representatives of the two parties on November 17, 1980. After taking office on January 20, 1981 the new administration of President Ronald Reagan reviewed, among many other policies, the status of the Micronesian negotiations, and decided to go ahead with plebiscites on the Compact of Free Association in all three Trust Territory jurisdictions, including Palau, as soon as possible. The negotiations were resumed, some revisions were made in both the Compact and the related agreements, and the new versions were signed by the Palauan and U.S. negotiators on August 26, 1982.

The Compact for Palau was essentially the same as that for each of the other two jurisdictions (its main provisions are outlined in Chapter 1). There were also six multilateral related agreements that were the same for all three jurisdictions. And in addition there were five bilateral related agreements for Palau covering the following matters:

(1) The management of the funds to be provided for Palau by the U.S.

(2) Construction projects to be financed by the U.S., including a new road for Babelthuap.

(3) In pursuance of sections 321 and 323 of the Compact, an agreement by Palau to give the U.S. the option to use four sites in Palau for construction of defense facilities.

(4) A clarification of the language of section 314 of the Compact regarding the status of radioactive, chemical and biological substances (which, as we shall see, became the main issue in the plebiscite campaign).

(5) A statement guaranteeing Palau's sovereignty over its territory, including its land, internal waters, territorial seas, and superadjacent airspace.

3. The Timing of the Plebiscite. One mark of Palau's new powers of self-government was the fact that the responsibility for fixing the date for the plebiscite on the Compact of Free Association and the related agreements rested with Palauan President Haruo Remeliik. After discussions with representatives of the U.S., President Remeliik first proposed the date of November 5, 1982. Several people urged him to allow more time for the voter education program, so he moved the date back to December 10, 1982. However, the president and vice-president of the United Nations Trusteeship Council informed President Remeliik that even this date did not allow enough time for the voter education program. On December 10, 1982 the OEK adopted House Joint Resolution No. 1-0099-8 setting February 10, 1983 as the plebiscite date. On December 16 Remeliik confirmed that the plebiscite would be held on February 10. This would allow about three months from the time the first announcement had been made to the holding of the vote, and

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President Remeliik felt this was quite adequate for the political education program and the campaign.

However, the opponents of the Compact sought a further delay, in the hope that they would be able to make a strong enough campaign to overcome what they perceived to be the Compact's head start. On January 11, 1983 Senator Moses Uludong introduced in the Senate a bill to defer the plebiscite to November 10, 1983. At about the same time the Senate Committee on Judiciary and Governmental Affairs reported that the voting date should be postponed so that the plebiscite would constitute a final and meaningful expression of the will of the Palauan people. The Senate adopted Senator Uludong's bill on February 1, but the House of Delegates adjourned sine die without taking action. Several non-Palauan anti-nuclear groups opposing the Compact (see below) also petitioned the Trusteeship Council to delay the vote so as to enable non-Palauan opinion to be brought to bear. But the Trusteeship Council replied that fixing the date was the responsibility of the government of Palau, and they would not interfere. So the plebiscite was held, as President Remeliik had announced, on February 10.

This controversy, like those over the wording of the ballot and the fairness of the voter education program (see below), was closely tied to the controversy over the merits of the Compact itself. Most opponents of the Compact and the related agreements, such as Senator Uludong, argued that three months was not enough time for the voters to understand the complexities of the long and legalistic Compact. The Compact's supporters replied that the basic issues had been discussed for well over a decade and that three months of more intensive voter education and campaigning by supporters and opponents was more than enough to make the final vote a true expression of the will of the Palauan people. And some observers felt that the very controversy over the timing of the plebiscite drew substantial public attention to the forthcoming vote earlier than might otherwise have been the case and thus made a significant, if unintended, contribution to the voter education program. Much the same could be said of the controversy over the wording of the ballot.

4. The Wording of the Ballot. The wording of the ballot was much more complicated -- and controversial -- in Palau than in the other two jurisdictions. The complications arose mainly from the fact that in Palau, as in the other jurisdictions, the Compact required approval by only a simple majority (50 percent plus one) of the voters -- but some provisions in the Constitution of Palau required that certain parts of the Compact would have to be approved by three-quarters of the voters. Since these discrepant majorities played a major role in the campaign and outcome as well as in the wording of the ballot, it is important to understand them.

Section 314 of the proposed Compact for Palau dealt with the future status of nuclear materials and weapons. It prohibited the use of Palauan territory for the testing of nuclear weapons, and the storing of toxic chemical and radioactive materials intended for weapons use. But it also contained another, more controversial provision:

> "The Government of the United States shall permit the presence of nuclear weapons in Palau only incident to transit and overflight, during a national emergency declared by the President of the United States, during a state of war declared by the Congress of the United States, in order to defend against

> an actual or impending armed attack on the United States or Palau, including a threat of such attack, or during a time of other military necessity as determined by the Government of the United States."

This section, unlike the other sections of the Compact, could not be approved by a simply majority vote because of Article XIII, Section 6 of the Constitution of Palau, which provided:

> "Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of three-fourths of the votes cast in a referendum submitted on this specific question" (emphasis added).

In short, the rest of the Compact could be approved by a simple majority of the voters, but Section 314 would require approval by at least three-quarters of the voters. Thus it became necessary to put on the ballot not only the two standard questions (Do you approve of the Compact? What other status would you prefer if the Compact is not approved?) but also a third question asking whether the voters approved of Section 314. It was agreed that the ballot would have three questions: question 1-A would ask whether the voter approved of the Compact in general, question 1-B would ask whether the voter approved of Section 314, and question 2 would ask the advice of the voter on what status should be sought if the Compact were not approved. So far so good, but a major controversy soon developed over the wording of question 1-B.

The original version of question 1-B, as agreed upon by the Palauan and U.S. negotiators in 1980, read:

> "Do you approve of the agreement concerning radioactive, chemical and biological materials concluded pursuant to section 314 of the Compact of Free Association?"

However, after subsequent discussions between the U.S. and Palauan negotiators, it was decided to reword question 1-B as follows:

> "Do you approve the agreement under section 314 of the Compact which places restrictions and conditions on the United States with respect to radioactive, chemical and biological materials?"

Palauan opponents of the Compact, strongly supported by a number of non-Palauan anti-nuclear groups (see below) protested the new wording vigorously, on the ground that it spoke only of restrictions placed upon the United States and did not mention that the essence of section 314 was its provisions allowing the United States to use Palauan soil for the storage and transshipment of nuclear weapons and nuclear materials if in the judgement of the U.S. it was necessary to do so in a military emergency. Accordingly, on January 29, 1983, a number of anti-Compact leaders, headed by Senator Joshua Koshiba, filed a suit in the trial division of the Supreme Court of Palau asking for an injunction against holding the plebiscite on February 10, on the ground that the reworded proposition 1-B was misleading, created confusion, and was an inaccurate description of the contents of section 314 which the voters were being asked to approve. The suit also charged that the Palauan translation of proposition 1-B was inaccurate, misleading, and internally inconsistent.

Two days later, on January 31, the court found that the revised version of proposition 1-B was misleading and in conflict with the law under which the plebiscite was to be held. The court ruled that the wording should revert to the original version, and that is what finally appeared on the ballot. Accordingly, the final ballot looked like this:

Official Ballot
Plebiscite on the Compact of Free Association
February 10, 1983
Republic of Palau

PUT ANY MARK IN THE BOX INDICATING YOUR CHOICE ON BOTH QUESTIONS OF PROPOSITIONS ONE AND ON PROPOSITION TWO. YOU MUST VOTE FOR BOTH QUESTIONS (A) AND (B) UNDER PROPOSITION ONE.

PROPOSITION ONE

THE COMPACT WILL BE APPROVED BY A MAJORITY OF THE VOTES CAST

(A) Do you approve of Free Association as set forth in the Compact of Free Association?

☐ YES
☐ NO

BEFORE THE COMPACT CAN TAKE EFFECT[,] SECTION 314 UNDER QUESTION (B) BELOW MUST ALSO BE APPROVED BY AT LEAST SEVENTY-FIVE PERCENT (75%) OF THE VOTES CAST.

(B) Do you approve of the Agreement concerning radioactive, chemical biological materials concluded pursuant to Section 314 of the Compact of Free Association?

☐ YES
☐ NO

PROPOSITION TWO

YOU MAY MARK A BOX BELOW TO INDICATE TO YOUR GOVERNMENT YOUR PREFERENCE FOR THE POLITICAL STATUS TO BE NEGOTIATED AND MUTUALLY AGREED BETWEEN PALAU AND THE UNITED STATES IN THE EVENT FREE ASSOCIATION IS REJECTED.

☐ A relationship with the United States closer than Free Association.

☐ Independence

The Political Education Program

Public Law No. 1-43, which prescribed the wording of the ballot and all other conditions and rules under which the plebiscite would be conducted, provided for the establishment of a political education committee consisting of five members appointed by the president with the concurrence of the presiding officers of the two houses of the OEK. On November 17, 1982 President Remeliik appointed, and the two presiding officers approved, Vice President Alfonso Oiterong as the committee chairman and Father Felix Yaoch, William Tabelual, Lawrence Ierago, and Augusta Ramarui as members. Miss Ramarui later resigned so that she would be free to compaign for the Compact, but the other members remained throughout the political education campaign. The committee appointed Bonifacio Basilius as the director of the program, and he served as its chief administrative officer throughout. The United States provided a total of $500,000 to defray the costs of the campaign, but its activities were determined entirely by the committee and carried out under Basilius's direction.

The Political Education Committee (PEC) began by commissioning translations of the Compact from the original English version into Palauan, Sonsorolese, and Tobian. Five hundred copies of the English and Palauan versions were printed, and one hundred copies of the Sonsorolese and Tobian versions were printed. These copies were distributed in the language preferred to anyone who requested them and were handed out at the various voter education meetings conducted by the PEC.

The PEC prepared and published other documents summarizing the Compact's main provisions, comparing the Compact on a number of dimensions with the alternatives of independence, commonwealth, statehood, and the status quo. It also prepared and recorded a number of radio and television programs. The radio programs, which averaged fifteen minutes in length, went over the Compact title by title, explained the provisions of each and answered questions asked by listeners. The committee also produced videotapes in which committee members, the president and vice president and the two OEK presiding officers explained the Compact. Under normal conditions television broadcasting is confined to Koror and Airai, and the television transmitter went off the air in December and resumed broadcasting only a few days before the plebiscite, so television did not play a major role in the voter education program or the campaign. In addition to the government's presentation of the Compact, Senator Moses Uludong, a leader of the anti-Compact forces, was also given government facilities to record and broadcast the case for a No vote.

The PEC also appointed a 37-member political education task force made up of representatives from each of the sixteen states. The members came to Koror for detailed instruction in the meaning of the Compact's various provisions. They were then divided into teams, the teams went to the various states and held at least three public meetings in each of the states. Each meeting was announced well in advance, and all citizens were invited and urged to attend, hear the team's presentation of the Compact's provisions, and ask any questions they wished. At least once a week each team checked with Basilius's office to get the answers to any questions they had been asked that they could not answer to the citizens' satisfaction. Teams were also sent to hold meetings at places outside Palau where significant numbers of Palauans were resident, including various parts of the Trust Territory, Guam, Hawaii, and California.

Several opponents of the Compact complained during and after the campaign that the political education program was conducted too hastily and too superficially, that the indigenous-language translations of the Compact were not accurate renderings of the English original, and that the program was so slanted in favor of the Compact that it was really propaganda rather than true education. Most observers, including AEI's scholars, did not agree. They were convinced that the program's administrators and education teams made a sincere and vigorous effort to be factual in their documents, radio and television broadcasts, and village meetings and that they provided accurate information for all citizens who sought it. And they concluded that there was no reason to suppose that the final vote was unfairly influenced by the program.

There is, however, one general point about the voter education programs in all three jurisdictions that should be made here. In each case the same government that had negotiated and signed the Compact also conducted the voter education program. With hardly an exception, the officials who supervised the translations, prepared the documents and radio and television programs, trained the education teams, and conducted the village meetings supported the Compact. No matter how conscientiously they performed their voter education duties -- and almost all of them were conscientious to the highest degree -- there was bound to be a certain anomaly in their dual positions. The report of the United Nations observers of the Palau plebiscite sums up the problem -- and its minimal practical consequences -- very well:

"Some opponents of the compact alleged that the funds pro-

> vided by the Administering Authority had been used for propaganda rather than education. . . .Such charges are perhaps inevitable when the programme of political education is established and to come extent conducted by a Government which has negotiated the agreement in question and is therefore committed to its support. . . .The Political Education Committee and the Director of the programme took seriously the injunction of impartiality, . . .but there were some occasions when the dividing line between education and advocacy may have become a little blurred. The Mission does not believe, however, that these seriously detracted from the effectiveness of the programme [and] it obtained no concrete evidence to substantiate charges that political education funds had been improperly used to influence voters."[2]

The Campaign

In Palau as in the Marshall Islands, but not the FSM, both the supporters and the opponents of the Compact conducted highly visible and energetic campaigns appealing to the voters in the three months preceding the plebiscite. The campaign in Palau, however, was unique in that non-Palauan organizations played an important role in the campaign against the Compact. The leading figures and organizations on both sides were the following:

1. The Compact's Supporters. The forces supporting the Compact were led mainly by the elected and appointed officials of the government who had negotiated the Compact and believed that it represented the best post-trusteeship status Palau could reasonably hope for. The most prominent figures were President Haruo Remeliik, Vice President Alfonso

Oiterong, Ambassador Lazarus H. Salii, and Carlos H. Salii, the speaker of the House of Delegates of the OEK. They did most of the speaking for the Compact on the radio and television programs, and they and their associates organized the public meetings, parades, and other events making up the pro-Compact campaign.

2. The Compact's Opponents. The forces opposing the Compact were composed of two quite different groups of leaders and organizations. The first consisted of a number of native Palauan leaders, notably Senator Moses Uludong, Senator Joshua Koshiba, Senator Johnson Toribiong, and the Ibedul Yutaka Gibbons.

The second element of the anti-Compact forces consisted of a number of non-Palauan groups, some based in Japan, others in Australia, and still others in the United States, who opposed the Compact mainly, although not exclusively, because of the nuclear provisions of Section 314. The principal organizations in this category were:

§The Micronesia Support Committee. This organization was headquartered in Honolulu, and its main contribution to the opposition's campaign was the publication of a 68-page pamphlet, "From Trusteeship to . . . ?", which set forth the organization's view of the situation and the issues in all three jurisdictions holding plebiscites, arguing that the U.S. had administered the Trust Territory solely in its own economic and military interests, had corrupted Micronesian culture and made Micronesians dependent on U.S. handouts, and now planned to use the Compact of Free Association to make its domination permanent. The pamphlet did not say so in so many words, but the strong implication was that the only honorable and viable future status for Palau and the other jurisdictions would be complete independence from the U.S.

§The U.S. Nuclear-Free Pacific Network. Based in San Francisco, this organization focused mainly on keeping all nuclear weapons, nuclear power, and nuclear wastes out of the Pacific. It produced a number of pamphlets and slide shows advocating that view, and its opposition to the Compact concentrated almost entirely on Section 314.

§The Pacific Conference of Churches. This organization, based in Honolulu, attacked not only Section 314 in Palau but also France's testing of nuclear weapons in French Polynesia and Japan's rumored plans to dump the wastes from nuclear power plants in certain Pacific ocean areas. Their most notable contribution to the Palau campaign was a large poster declaring:

> "If it is safe --
> DUMP IT IN TOKYO
> TEST IT IN PARIS
> STORE IT IN WASHINGTON
> BUT, KEEP MY PACIFIC NUCLEAR-FREE!"

§Focus on Micronesia Coalition. This organization, with headquarters in New York city, was a coalition of a number of groups of church clergy and laity seeking to prevent the spread of nuclear weapons, wastes, and other materials in the Pacific. It too produced some anti-Compact pamphlets and posters circulated in Palau.

§GENSUIKIN (an acronym for the "Japan Congress Against Atomic and Hydrogen Bombs"). In the mid-1970s an organization was formed in Japan to protest and try to stop the development and deployment of nuclear weapons. In 1980 the group split over the question of whether it should condemn all nuclear weapons or whether it should exempt those developed and deployed by the Soviet Union. Those who believed that all nuclear weapons should be condemned reconstituted themselves into GENSUIKIN, and cooperated with other anti-nuclear organizations in Palau and elsewhere in the campaign against the Compact and Section 314. Part of this effort included the sponsorship of an "education and solidarity conference" held in Guam in the week of November 17, 1982 attended by anti-nuclear activists from several places including Palau.

§The Campaign Against Nuclear Power. Based in Brisbane, Australia, this organization had the broadest program of all the outside groups working against the Compact. The CANP opposed not only the Compact in Palau but also the Marcos regime in the Philippines, Japan's alleged plans to dump nuclear wastes in the Pacific, the promotion of infant-feeding formulas in Pacific island societies, and the tour of the South African rugby team in Australia. It too supplied some pamphlets and posters opposing the Compact, particularly Section 314.

Many of these organizations participated in a 1975 conference which drew up a "People's Charter for a Nuclear Free Pacific." The charter was widely distributed during the campaign, and its main provisions make clear the grounds of their opposition to the Compact:

> "We, being inhabitants of the Pacific, have agreed as follows:
> Article 1: That a pacific nuclear free zone be declared, including. . .all of Micronesia;
> Article 2: That the peoples and governments of the Pacific will not permit any of the following activities or installations within this zone:
> a) all tests of nuclear explosive devices including those described as "peaceful";
> b) all nuclear weapon test facilities
> c) all tests of nuclear weapon delivery vehicles and systems
> d) all storage, transit, deployment or any other form of presence of nuclear weapons on land or aboard ships, submarines and aircraft within;
> e) all bases carrying out command, control, communication, surveillance, navigation, and any other functions which aid the performance of a nuclear weapon delivery system;

> f) all nuclear power reactors, excepting very low capacity experimental units, all nuclear powered satellites, surface and sub-surface vessels and all transit, storage, release or dumping of radioactive material;
>
> g) uranium mining, processing and transport;
>
> Article 3: that the peoples and the governments within the zone will withdraw from all mutal defense alliances with nuclear powers;
>
> Article 4: that the peoples and governments signatory to this charter will work to ensure the withdrawal of colonial powers from the Pacific."[3]

§The Pacific Futures Center. Members of this Seattle-based group arrived in Palau at the beginning of February 1983 and remained throughout the plebiscite. A videotape they had prepared months earlier in Palau and elsewhere was shown repeatedly on Palauan television and in small discussion groups in Koror and Babelthuap. The film was highly critical of the Remeliik administration and its negotiators, but this aspect was removed when, under the title of "Strategic Trust," it was shown to viewers in the United States in May 1984 when the U.S. Congress was beginning its hearings on implementing the Compact. The strong anti-nuclear, anti-Compact messages and attacks on U.S. policies during the trusteeship period dominated both versions of the film.

3. The Issues. Although many different aspects of the Compact and related agreements were discussed during the campaign, it was clear that there were three overriding issues:

First and foremost, after free association is established, should the United States be allowed to store and transship nuclear weapons and materials in Palauan territory? Or, more succinctly, is Section 314 an acceptable price to pay for free association or is it not? The Compact's proponents argued that giving the United States this power would enable it to defend Palau more effectively in time of war or other military emergency. They added that the United States feels that it needs such a capability to defend itself and to maintain peace in the Pacific, and so it is an entirely legitimate concession for the Americans to ask. Moreover, the United States has no plans whatever to use Palauan soil to store nuclear weapons or build a submarine base or build any major new military facility. Even if they have, the Compact will bring so many benefits to Palau that the concessions to the U.S. in Section 314 against some highly unlikely possibility in the remote future are well worth making.

The Compact's opponents argued that the United States might well use its powers under Section 314 to support and extend its aggressive and bellicose strategic policies and thus materially increase the danger of nuclear war in the Pacific. If such a war were to come and Palau were a major storage center for American nuclear weapons, it would certainly become a prime military target for America's antagonists, and Palau could well be destroyed in a war in which its own interests were not at stake. And even if the nuclear weapons were never used and a war never came, their very presence on Palauan soil or in Palauan waters might well pose major threats to the environment and to the health of Palauans. No benefit from a relationship with the United States, they said, would be worth such a cost.

The second issue was: should the United States be allowed to use land areas in Babelthuap for bases and other military uses (it was widely rumored, though often denied by U.S. officials, that the U.S. Navy intended to build a major new base for Trident nuclear-powered submarines). The arguments of both sides were much the same as those they made about Section 314. The pro-Compact forces said that such sites would probably never be used, but even if they were they would help the United States to defend both itself and Palau better, that they would help to preserve peace, and that they too were a reasonable concession to make to the U.S. in return for the Compact's benefits to Palau. The anti-Compact groups argued that such sites would increase the danger of war and make Palau a military target in such a war, and the Compact's benefits were not great enough to justify such risks. The pro-Compact groups replied that the Compact does not specify that military facilities will be built, but merely preserves U.S. options to use Palauan areas if the need arises. There are, they said, no plans to exercise these options, and Ambassador Zeder had clarified the situation in his letter of November 1, 1982 to Palauan Ambassador Lazarus Salii; so no such risks were involved.

The third issue was prominent in Palau as well as in the other two jursidictions: is the financial support promised to Palau by the United States adequate, or can Palau do better by achieving independence or by renegotiating the Compact? The Compact's proponents argued that the benefits promised by the United States had been arrived at after thirteen years of difficult negotiations, they were sufficient to support economic wellbeing and development in Palau, and, realistically speaking, they were the best deal Palau could hope to get. The Compact's opponents declared that the proposed benefits were too small, they were guaranteed for too short a time, and they were not enough to justify the other sacrifices Palau would have to make.

It should be emphasized that, so far as AEI's scholars could tell, none of the Compact's Palauan opponents publicly advocated independence as an alternative status, and relatively few advocated commonwealth or statehood (although in the election 1,800 voters -- 24.8 percent of all voters -- voted for independence, and 2,250 -- 31.0 percent -- voted for a closer relationship with the U.S.). Their position seemed to be a "Yes-No" position -- that is, Yes to the principle of free association, but No to this particular version of it, especially to Section 314. If the Compact were to lose, most of them seemed to favor renegotiations that would eliminate Section 314 and produce a new Compact which they could support. The non-Palauan groups opposing the Compact (see above) said very little about what they would like to see in place of the Compact -- their prime object was to defeat Section 314. However, it would seem that the logical conclusion to be drawn from their allegations about the aggressive strategic and military posture of the U.S., its record of colonial exploitation of Palau, and its lack of concern for Palau's interests would be that the only proper post-territory status for Palau would be complete independence -- economic as well as military -- from the United States.

The plebiscite turned, however, mainly upon issues concerning whether this particular Compact, Section 314 and all, should govern Palau's future status.

Election Experience and Rules

1. Previous Election Experience. It is important to note that the 1983 referendum was far from being the first free and competitive election ever held in Palau. Prior to February 10, 1983 Palau had had elections for members of the Congress of Micronesia in 1965, 1966, and in all even-numbered years from then until 1978-- a total of eight elections in all. In addition, elections for members of the district

legislature of Palau had been held in every odd-numbered year from 1947 to 1981, for an additional total of sixteen elections. Elections had been held for president, vice president, and members of the OEK in 1979. And referendums had been held in 1975, 1976, 1978, and 1979. The 1978 and 1979 referendums were observed by teams of observers sent by the United Nations Trusteeship Council, and on both occasions their reports concluded that the conduct of the referendums had measured up well to the standards of free and honest elections. As a result, Palau began its preparations for the 1983 plebiscite with a well-established set of election procedures and a corps of experienced election administrators.

2. The Rules. The 1983 plebiscite was conducted under rules laid down by the OEK in Palau Public Law No. 1-43, which came into effect in November 1982. The law established as the main supervisory agency a three-member Plebiscite Commission to be appointed by the president. On November 30, 1982 President Remeliik appointed Sylvester Alonz, Daiziro Nakamura, and Emil Ramarui, and soon thereafter the members chose Nakamura as their chairman. The Commission then appointed a number of persons, most of them schoolteachers, to be the local election officials presiding over registration and the casting of ballots, and collectively they constituted the Plebiscite Board, which was accountable to the Commission. AEI's scholars observed an early activity of the Board that illustrates the way the Palauans coped with their administrative problems: Two days before the election all the Board members were brought to Koror for a final training and review session. Under the guidance of their supervisors they simulated all steps of the electoral process, from the original identification and certification of the voters through the casting of the ballots,

despositing the ballots in the boxes, locking the boxes and securing them against tampering, and delivery of the boxes for transportion to the central counting office in Koror. The session went on a bit longer than anticipated, and Chairman Nakamura announced that he would have to bring it to an end so that the members would not miss the tide for making the return boat trips to their villages

By law every citizen of Palau who was eighteen years of age or older on the day of the plebiscite was eligible to vote. The Commission and Board established a number of places for registering voters in the various states, and the deadline for registration was February 9, the day before the plebiscite.

Registered voters could cast their votes in one of three ways: One, they could vote in person on election day by going to the polling place in their home district, have their registration verified, and mark and deposit their ballots. Two, if they could not be present in their home districts on election day, they could vote in person at a polling place in another district so long as they were properly registered in their home district. Most of the voters in this category voted in Koror on election day; their ballots were put in special boxes marked with the names of their home states, and were later added to the boxes coming from those states so that the ballots of all voters from each state would be counted together. Third, if they were too ill to go to a polling place, or unavoidably absent from Palau on election day, they could apply, in person or by mail, for an absentee ballot, sign an affidavit that they were properly qualified to vote, mark the ballot, and mail it to the Plebiscite Board in Koror in an envelope that was postmarked no later than February 10. As we will see, a significant number of votes were cast by absentee voters and by persons voting in districts other than the ones in which they were registered.

The Commission established a total of forty-two polling places in Palau and an additional special polling place in Koror High School for voters who were registered in other districts but present in Koror on election day. They also established polling places for students and other Palauans resident in Guam, Saipan, Yap, Truk, Ponape, Majuro, Honolulu, Fresno (Calif.), and Denver (Colo.) They appointed at least two Board members to supervise and manage each polling place in Palau, and the polls there opened at 7:00 a.m. and closed at 7:00 p.m.

The Commission allowed each of three "sides" to send to each polling place two poll watchers: the group that had supported the Compact, the group that had opposed it, and the group that had taken no public position.

All ballots except those cast in Sonsorol and Tobi (where the votes were counted locally) were delivered in locked boxes to the central counting location in the Senate chamber in Koror. The Commission appointed a five-member Counting and Tabulating Committee to count the ballots (one acting as caller, another as observer, and three as talliers) by a time-honored procedure. The calls were made using a microphone and loudspeaker system so that persons outside the immediate counting area could see and hear everything that took place. AEI's three scholars, and seven observers from the United Nations, were given privileged observation positions within the counting station and permitted to move about freely to observe all aspects of the count. Several observers and newsmen tallied the votes as they were called and discovered no errors.

The count began at 9:00 p.m. as scheduled. The ballot boxes that had been returned were placed against one wall. All ballot boxes bore numbers, and were processed in a geographical sequence beginning with Kayangel at the northernmost tip of the islands, so that observers would have a clear understanding of the source of the votes.

One team unlocked each ballot box and verified the contents by separating the ballots from the remainder of the materials. After verifying the contents, the ballots were given to the caller who proceeded to call the votes on each ballot by question. Each of three Committee members tallied the votes and upon completion of the box verified the tally. As one box was being called and tallied, a second box was being emptied and its contents verified.

If, during the count, there was any question about how a ballot should be counted, the ballot was immediately examined and adjudicated by the Committee members. In most instances, there was little question about whether the ballot should be counted. Only one ballot proved especially troublesome, but it held up the count for more than fifteen minutes while the rules were studied and debated. The rules provided that any mark made in a box counts for that box and that more than one mark in the same box does not invalidate the ballot. The rules also provided that ballots should not be rejected for technical reasons if it was possible to determine the voter's choice. In this instance, the voter's choice was indicated by the letters "NO" in the YES box. After a lengthy discussion, the Committee ruled the ballot invalid.

The counting, which had begun at 9:00 p.m. on Thursday, continued until after 4:00 a.m. on Friday. Unofficial vote totals from the distant and sparsely populated Southwest islands were obtained by radio and announced even though they were unofficial until counted in Koror. Actual delivery of these ballots took more than a day, and they were counted officially when they arrived. The ballot count resumed Friday morning after 11:00 a.m. and continued until 5:00 p.m., when a recess was declared to allow the United Nations observers to host a reception. The count resumed at 10:00 p.m. Friday, at which time a disputed ballot box from Guam was examined.

Two anti-Compact senators, Moses Uludong and Johnson Toribiong, filed a complaint against alleged irregularities occuring during the voting on Guam. They charged that there was no authority to conduct the plebiscite prior to February 10 and that the voting on Guam could not be considered absentee voting. They further charged that the affidavits completed by voters on Guam were notarized by Palauans who had no authority to notarize anything on Guam. They also complained that there was no written designation of polling places outside Palau, and the ballots cast on Guam were transported to Palau in a cardboard box, and that several unnamed persons who were ineligible to vote because they had renounced their Palauan citizenship to become U.S. citizens had cast ballots.

Voting on Guam and other places outside Palau was by absentee ballot. Mail delivery in Palau is dependent on air delivery and there are only three flights per week to Palau. To facilitate delivery of the ballots to and from persons who wished to vote at off-island locations, teams of election officials were dispatched to make available absentee ballots and return them to Palau prior to the deadline. To make this as easy as possible, the officials designated times and places where absentee ballots could be obtained. These officials were also prepared to accept the voted absentee ballots, in their sealed dual envelopes, for delivery back to Palau. The sealed envelopes, which could have been deposited in the mail for delivery, were transported in cardboard boxes.

The Uludong-Torobiong suit asked the court to declare all ballots cast outside Palau void and to declare the plebiscite vote illegal and thus null and void. The court rejected the complaints against the procedures, and accepted the administration's argument that they merely facilitated casting absentee ballots. The court also rejected the complaint that non-Palauans had voted because no specific individuals were named. The court added that ballots cast by Palauans overseas as well as all absentee ballots and others cast by affidavit were subject to challenge prior to being counted, but even though the count took place publicly no specific ballots cast by overseas Palauans were challenged. For these reasons, the court upheld the election's validity.

The total ballot count took several days, in part because the rules required that all ballot boxes were to be counted in the OEK building, one box at a time. The process of verifying the affidavits of all the persons who had voted at overseas locations or at polling places other than where they were registered also took a great deal of time. Moreover, absentee ballots postmarked no later than February 10 had to be counted if they were received in Koror no later than February 15. Thus February 15 was the earliest possible date the count could be completed, and the whole process was lengthy and laborious.

When the whole count was completed, the counting committee reported its totals to the Commission. The Commission added the counts from Sonosorol and Tobi and from the overseas polling places, and reported the grand totals to President Remeliik. The process was completed when the president officially certified the results to the OEK.

One unusual incident on plebiscite day is worth reporting, since it involved a sudden change in the rules. As we noted earlier, the instruction to the voters printed on the ballot said, "You must vote for both questions (A) [approval of the Compact] and (B) [approval of Section 314] under Proposition One." On the other hand, a separate set of instructions to the voters indicated that their ballots would be valid and counted if only proposition One-A were marked, but would be invalid if only proposition One-B were marked. They would also be invalid if only Proposition Two were marked.

Early on election day several observers called President Remeliik's attention to the confusion caused by these contradictory instructions, and at about 11:00 a.m. he ruled that any ballots would be valid and counted as long as the voter voted on at least one of the three questions -- Proposition One-A, Proposition One-B, or Proposition Two. This information was trasmitted to the team that would count the ballots, but it is uncertain whether or not polling place officials were aware of the change or notified the voters. However, there had been no organized effort to encourage voting only on Proposition Two, and it appeared that no voters actually voted only on Proposition Two. So it seemed to most observers that the change in the rules, while irregular in its making and timing, had no apparent effect on the actual count or the outcome. This last-minute change constituted the only substantial lapse in what was otherwise a well-conducted and fair election.

The Plebiscite Results

1. Turnout. According to the official results as certified by

President Remeliik, there were a total of 8,213 registered voters on election day. Of these, a total of 7,246 voted. The turnout percentage was thus 88.2 percent, a most impressive figure (well above most turnout figures in the United States) and one that continued the record of high turnouts characteristic of previous elections in Palau.

2. Votes by States. The votes cast in each of the states and other areas on the three propositions are shown in Table 2-1:

(Table 2-1 about here)

Obviously the most important facts listed in Table 2-1 are those relating to the final result. In the voting on proposition One-A the Compact of Free Association won with 4,452 votes Yes to 2,715 No -- for a solid majority of 61.4 percent. The voting on proposition One-B produced 3,717 votes in favor of Section 314 to 3,309 votes against, and this favorable majority of 51.3 percent was far below the three-quarters majority required by the Palauan Constitution. In the days immediately following the plebiscite there was considerable uncertainty about just where this ambiguous result left the Compact. However, the Palauan Supreme Court soon ruled that since Section 314 had failed to win the constitutionally-required majority, the entire Compact was defeated. We shall consider below where this ruling left the current and future status of Palau.

The Compact failed in another respect: the Constitution provided that a proposed constitutional amendment (and the Compact was regarded as the legal equivalent of such an amendment) would come into force only if it was approved by a majority of the votes cast in the whole republic and by popular majorities in at least three-fourths of the states.

Proposition One-A received majorities in ten of the sixteen states, and Proposition One-B received majorities in eight -- in both instances well short of the required minimum of twelve states.

Table 2-1 also shows that a total of 7,167 voters voted on proposition One-A and 7,026 voted on One-B, so there was almost no dropoff between the two propositions, both of which had received a great deal of attention from the political education program and from all groups active in the campaign. On the other hand, only 4,050 voters -- slightly more than half of the total -- expressed a preference for independence or a closer relationship with the United States in proposition Two.

From the comments made by active campaigners and ordinary voters prior to the plebiscite, one could discern three reasonably distinct positions: one was the "Yes-Yes" position, calling for a positive vote on both the Compact and Section 314; the second was the "No-No" position, calling for negative votes on both matters; and the third was the "Yes-No" position, which advocated voting Yes on the Compact but No on Section 314. The aggregate election returns listed in Table 2-1 do not, of course, allow us to estimate the number of individuals holding these positions, but the state-by-state returns are suggestive. Of the fifteen states listed (the figures from Sonsorol and Tobi were combined), eight (Aimeliik, Angaur, Kayangel, Ngeraard, Ngarchelong, Ngatpang, Peleliu, and the southern areas) voted Yes-Yes; six (Airai, Koror, Ngaremlengui, Ngardmau, Ngchesar, and Ngiwal) voted No-No; and only Melekeok voted Yes-No.

The crucial importance of the three-quarters requirement for Section 314 is shown by the fact that while eight of the fifteen states voted Yes on proposition One-B, only Kayangel and the southern areas gave it a majority of over 75 percent; in the other pro-Section 314 states the majorities ranged from 51.4 percent in Ngeraard to 59.5 percent in Aimeliik.

Another noteworthy pattern in the Palau voting is the relative closeness of the vote in so many states. In the FSM and the Marshall Islands, as we shall see, most voting districts voted either heavily Yes or heavily No -- very few had small majorities one way or the other; and most observers are inclined to put this down to the strong influence of clan loyalties and the power of the traditional chiefs. But this was not the case in Palau. On proposition One-A, the majority was over 80 percent in only one state, in the 70s in two states, in the sixties in one state, and in the 50s in seven states. On proposition One-B, only one state was over 80 percent, two were in the 70s, one was in the 60s, and twelve were in the 50s. The frequency of relatively narrow majorities for one side or the other may mean that the clan structure and the power of the traditional chiefs is weaker on political matters in Palau than in the other two jurisdictions, but our data do not permit us to express more than a hunch that that was the case. In any case, this was one major respect in which voting patterns in Palau were noticeably different from those in the FSM and the Marshall Islands.

A glance at the map of Palau suggests that the strongest opposition to the Compact and Section 314 came in the more densely populated and urbanized areas, especially Koror and the areas nearest to Koror, such as Airai, Ngaremlengui, Ngardmau, Ngchesar, and Ngiwal; and, conversely, the strongest support for the Compact came in the less densely populated areas and those more distant from Koror.

As in the FSM and the Marshall Islands, there was substantially less voter interest in proposition Two than in either part of proposition One -- quite possibly because the voters knew that their choices on proposition One would constitute a binding decision on important matters, while any preferences they expressed under proposition Two would, at most, be advisory to future negotiations. In any event, of the 7,256 voters casting ballots, a total of 7,167 (98.9 percent) voted on proposition One-A, 7,026 (97.0 percent) voted on proposition One-B, but only 4,050 (55.9 percent) indicated a preference for independence or a closer relationship with the U.S. under proposition Two.

Of those expressing a preference, 2,250 (55.6 percent) marked "closer relationship with the U.S.", and 1,800 (44.4 percent) marked "independence" -- a fact which may or may not be significant for future negotiations over Palau's status.

If one ranks the states according to their majorities on each of the three questions, it is clear that Yes votes on One-A and One-B are strongly correlated with abstentions on proposition Two -- and with preferences for a closer status by those who did vote. Conversely, No votes on One-A and One-B are correlated with preferences for independence on proposition Two, although this correlation is weaker than the others. So it seems that most voters who wanted the Compact were not very concerned about what status Palau should have if the Compact lost, and many voters who did not want the Compact preferred independence if there was to be no Compact.

3. Differences between On-Palau and Off-Palau Voters. Finally, it is worth drawing attention to the striking differences in preferences

between Palauans voting on Palau and Palauans voting in other areas. Of the total of 7,256 voters, 5,692 (78.5 percent) voted on Palau and 1,564 (21.5 percent) voted off Palau. As Table 2-2 shows, the two groups voted quite differently:

(Table 2-2 about here)

The figures in Table 2-2 show that the Palauans voting in other parts of Micronesia and in the United States supported the Compact and Section 314 much more strongly than did the Palauans voting on Palau. Also, many more of those voting off Palau expressed preferences for the options under proposition Two than did those voting on Palau; and, by a very wide margin (84.8 percent) they preferred a closer relationship with the United States while those voting on Palau preferred, by a smaller margin (58.1 percent), independence. Most of the Palauans voting off Palau were persons studying in universities or taking other kinds of training, and it is not unreasonable to suggest that they included a higher proportion of future leaders of Palau than those who voted at home. Thus it is at least possible that their considerably stronger preferences for a close relationship with the United States will play a significant role in relations between the two governments in the years to come.

The Fairness of the Plebiscite

The Palauan plebiscite of 1983 was short of perfection in several respects; yet, strange to say, some of the lapses seem to have improved the plebiscite's quality. For example, there was, as we have seen, a good deal of confusion and uncertainty in the early stages about both the timing of the vote and the wording of the ballot. The successive changes of date from the original proposal of November 5, 1982 to the final date of February 10, 1983 were confusing -- and yet they both called attention to the plebiscite and gave the people an additional three months in which to acquire information about the issues. The sharp controversy and ultimate court decision about the wording of the ballot also caused a good deal of confusion and uncertainty -- and yet they too served the purposes of heightening public awareness of the significance of the choices to be made. We cannot say for certain, of course, but it is possible that both controversies made a contribution to the very high turnout in the ultimate election.

On balance, AEI's scholars agreed with the observers sent by the United Nations Trusteeship Council that the political education program was as objective, factual, and fair as any such program can be, given the inevitable, if marginal, ambiguity arising from the fact that the program was conducted by the same government that conducted the negotiations, signed the Compact, and put it before the voters because it believed the Compact was in Palau's best interests. While many of the legal details were undoubtedly not well understood by many of the voters, the basic issues were thoroughly discussed in the voter education program and in the campaign. Both the proponents and opponents of the campaign had full and free access to radio broadcasting and other channels of communication, and made full use of them. It seemed clear that many more Palauans listened to radio than watched television or read newspapers; radio facilities were made freely available to all three "sides" on a first-come-first-serve basis. In the ten days before the election the radio station reserved ten hours each day for anyone who wished to broadcast comments on the Compact, and as far as we could tell the Compact's opponents were on the air more than its advocates, with Senator Uludong speaking -- sometimes live and sometimes by recording -- more than anyone else.

The ambiguity over how many propositions a voter had to mark in order to cast a valid ballot was unfortunate, and President Remeliik's election-day ruling came after a number of voters had already voted -- yet his ruling made it easier, not harder, to cast a valid ballot. In other respects the casting and counting of the ballots was scrupulously accurate and fair, if laborious and inefficient. And, most important of all, our scholars, like the other outside observers, have no doubt that the final result was a fair and accurate expression of the will of the people of Palau on the three propositions put before them.

What was their will? In our view, the election results make the answer quite clear: A substantial majority of the people of Palau wanted the Compact, and preferred free association to independence, commonwealth, statehood, or any other alternative status. A smaller majority were willing to go along with the nuclear arrangements in Section 314 if that is what it took to get the Compact. However, a substantial minority were not willing to accept Section 314, and the three-quarters requirement of the Palauan Constitution gave them, in effect, the power to veto the desire of the majority for the Compact -- a power which they used effectively.

Where, then, did the February 10 vote leave the status of Palau? At the end of 1983 it was clearly different from the status of the FSM and the Marshall Islands; in both of those jurisdictions the voters unambiguously approved the Compact, and, at the present writing, the U.S. government is in the process of implementing free association for both. (Technically speaking, all four Trust Territory jurisdictions --

the Northern Marianas, Palau, the FSM, and the Marshall Islands will remain Trust Territory districts until the trusteeship agreement is terminated for all four.) In mid-1984, however, Palau's status was precisely what it had been prior to the February 10 vote: it was a district of the Trust Territory and would remain so until a new Compact was negotiated, signed by both the government of Palau and the government of the United States, and approved by whatever majority or majorities are required by the Constitution of Palau.

That may be difficult. The February 10 plebiscite showed how difficult it is to get a three-quarters majority in a free and fair election, and any future agreement that has to clear the three-quarters requirement is likely to be in similar difficulty. Whether the considerable ingenuity and good will the Palauan and American negotiators have shown in the past would be capable of developing a new agreement that is satisfactory to both parties and capable of being approved by the voters of Palau remained to be seen when this report was written.

Footnotes for Chapter 2

1. For a more detailed discussion, see Report of the United Nations Visiting Mission to Observe the Referendum in Palau, Trust Territory of the Pacific Islands, July 1979 (United Nations Document T/1813, 1980), pp. 7-11.

2. Report of the United Nations Visiting Mission to Observe the Plebiscite in Palau, Trust Territory of the Pacific Islands, February 1983 (United Nations Document T/1851), p. 35.

3. Distributed by the Pacific Concerns Resource Center, P.O. Box 27692, Honolulu, Hawaii 96827.

Table 2-1

Results of the Palau Plebiscite on the Compact of Free Association, 1983

	Proposition One-A			Proposition One-B			Proposition Two		
State	Yes	No	Percent Yes	Yes	No	Percent Yes	Closer Rel.	Ind.	Blank
Aimeliik	128	63	65.6	116	73	59.5	48	36	111
Airai	56	164	24.9	52	166	23.1	39	128	55
Angaur	146	74	65.5	130	86	58.3	27	45	151
Kayangel	72	15	81.8	70	16	79.5	13	8	67
Koror	2,371	1,510	45.8	585	893	38.7	306	470	728
Melekeok	173	147	53.6	145	173	45.5	68	93	161
Ngeraard	208	137	59.8	179	161	51.4	71	85	192
Ngaremlengui	124	136	47.3	112	148	42,7	40	98	123
Ngarchelong	397	201	65.5	357	241	58.9	125	144	337
Ngardmau	72	95	42.1	57	98	33.3	29	54	88
Ngatpang	89	53	61.8	76	63	52.8	24	37	81
Ngchesar	101	115	46.5	88	126	40.6	42	88	87
Ngiwal	313	339	47.6	274	367	41.7	108	228	321
Peleliu	467	149	75.0	354	194	56.8	160	88	373
Sonsorol, Tobi, etc.	87	3	96.7	84	6	93.3	58	3	29
Votes cast outside Palau									
Guam	517	72	86.9	408	170	68.6	457	48	89
Majuro	17	0	100,0	11	5	64.7	16	0	1
Ponape	51	8	86.4	23	36	39.0	46	6	7
Saipan	129	6	95.6	104	29	77.0	81	7	46
Truk	16	6	72.7	7	15	31.8	10	8	4

Yap	146	4	97.3	138	12	92.0	117	5	28
Calif.	69	42	61.1	44	67	38.9	70	40	3
Colo.	62	12	83.8	57	17	77.0	54	17	3
Hawaii	161	35	81.7	120	74	60.9	121	35	40
Absentee by air mail	160	40	79.2	126	73	62.4	120	29	53
PALAU TOTAL	4,452	2,715	61.4	3,717	3,309	51.3	2,250	1,800	3,178

Source: Report of the United Nations Visiting Mission to Observe the Plebiscite in Palau, Trust Territory of the Pacific Islands, February 1983 (United Nations Document T/1851, 1983), pp. 32-33.

Table 2-2

On-Palau and Off-Palau Voters in the 1983 Plebiscite

	Voters Voting on Palau	Voters Voting off Palau
Votes on the Compact		
Percent Yes	55.6	85.5
Percent No	44.4	14.5
Votes on Section 314		
Percent Yes	48.8	67.6
Percent No	51.2	32.4
Votes on Proposition Two		
Closer relationship	41.9	84.8
Independence	58.1	15.2

Source: Figures in Table 2-1

Chapter 3

The Plebiscite in
The Federated States of Micronesia

The circumstances of the plebiscite on the Compact of Free Association in the Federated States of Micronesia (FSM) were different from those in Palau and the Marshall Islands in several respects worth noting.

For one thing, the FSM is substantially larger in both land and population than the other two jurisdictions. The FSM's total land mass is 689 square kilometers, compared with Palau's 492 and the Marshall Islands' 180. The FSM's total population is 73,000, compared with Palau's 12,000 and the Marshall Islands' 31,000. These differences in population were reflected in the allocation of representation in the original Congress of Micronesia (see Chapter 1): in the Congress's House of Representatives, Truk had five members, Ponape four members, and Yap two members, for a total of eleven, compared with four for the Marshall Islands and three for Palau. If the proposed constitution voted on in the referendum of 1978 (see Chapter 1) had been ratified by all three jurisdictions, the Truk-Ponape-Yap-Kosrae group would have had at least three-fifths of the seats in Congress and votes for president. This distribution of political power under the proposed constitution was perfectly clear to all concerned, and it played a major role in the decisions of Palau and the Marshall Islands to reject the constitution and establish their own separate governments.

In the second place, linguistically and culturally the FSM is by far the most heterogeneous of the three jurisdictions. It has eight official languages in addition to English, as compared with three in Palau and one in the Marshall Islands. It also has more internal differences in culture, history, and perhaps even aspirations for the future than Palau or the Marshall Islands. Perhaps the most important of these differences are those that generate the strong separatist tendencies in the state of Ponape. Ponape lies about 400 airline miles East and slightly South of Truk. Its main language is Ponapean, although it also has a small enclave of polynesians from the small atoll of Kapingamarangi who speak Kapingi and have their own distinct culture. Ponapean is quite different from Trukese, the official language of Truk, and Ponapeans generally see themselves as being different from the Trukese in important ways. With a population of about 22,000 Ponape is larger than all of Palau, but it is still considerably smaller than Truk, which has a population of 37,500. During the periods of colonial rule by Spain and Imperial Germany, Ponapeans resorted to armed rebellion far more frequently than Micronesians elsewhere; and their traditional desire for independence continues to manifest itself in Ponape's unease at being part of the FSM; and in the ethnic Ponapeans' small majority against the Compact and for independence in the 1983 plebiscite (see below). Moreover, the traditional culture, including the power of the traditional chiefs, the nanmwarki and the nankens, has been less eroded by Christian missionaries and by the ways of Western adnministrators in Ponape than in most other parts of the FSM.[1]

Truk, Yap, and Kosrae are also quite distinct from one another, but their differences have so far not led to separatist sentiments as visible or as strong as those in Ponape -- although, as we shall see, there is a separatist movement of significance in the Faichuk Islands in the state of Truk.

These wide variations in population and culture have several political consequences for the FSM. One appears in the representation of the various states in the Congress of the FSM: Truk has six members, Ponape four members, Kosrae two members, and Yap two members. Consequently, in any policy conflict between Truk and Ponape, Truk needs the support of only one of the other two states to outvote Ponape, while Ponape needs the support of both Kosrae and Yap to outvote Truk. Moreover, since the president of the FSM is elected by the Congress from among its own members, Truk has a great advantage in the selection. Ponapeans are well aware of the fact that the first, and so far the only, president of the federation has been Tosiwo Nakayama, a Trukese elected in 1979 and reelected in 1983. In the opinion of most observers, including AEI's scholars, President Nakayama is one of the most outstanding leaders in all of Micronesia, and has made a considerable effort to be -- and to be seen to be -- the president of all persons and sections of the FSM rather than an advocate for narrow Trukese interests. Even so, many Ponapeans think of themselves as a permanently holding the number-two position in the federation; and even such concessions as locating the federal capital in Kolonia on Ponape and selecting the vice president from Ponape (Petrus Tun in 1979 and Bailey Olter in 1983) have not eliminated Ponapean separatism. Later we shall note its consequences for voting patterns in the plebiscite.

The third difference is the fact that, even though in World War II Truk was one of Japan's most important military bases outside the home islands, the FSM today has considerably less short-term military significance for the United States than either Palau or the Marshall Islands. The U.S. has only a few military minor installations in the FSM, and nothing remotely comparable to the Kwajalein Missile Range in the Marshall Islands. It has never tested nuclear weapons in the FSM, as it did in some northern atolls of the Marshall Islands in the late 1940s and early 1950s. It has never made any proposals to the FSM for the acquisition of sites for military installations or for the storage and transshipment of nuclear weapons or other nuclear materials. In fact, the only substantial strategic interest the United States has in the FSM is "denial" -- the commitment by the FSM that the armed forces of other countries will not be permitted to enter its territories and waters without the permission of both the FSM and the U.S.

That situation may well have contributed significantly to the fourth difference: the Compact was much less contentious in the FSM than in Palau or the Marshall Islands, the election campaign was considerably less active and visible, and in general the political temperature in in which the FSM's plebscite was conducted was considerably lower than in either Palau or the Marshall Islands. That is not to say that there was no significant disagreement of any kind about the Compact; indeed, as we shall observe below, the voters in Ponape actually produced a small majority against the Compact. Even so, the plebiscite stirred up considerably less visible fuss in the FSM than in either of the other two jurisdictions.

AEI's scholars made two trips to the FSM. The first was made by Eugene Lee and Austin Ranney to Ponape and Truk from February 14 to 22, 1983. The main purpose of this initial trip was to observe and discuss the voter education program. During their stay Lee and Ranney held discussions with President Tosiwo Nakayama; Andon Amaraich, the FSM's foreign secretary and chairman of its Commission on Future Status and Transition; Petrus Tun, the vice president of the FSM and chairman of the Plebiscite Commission; Ihlen K. Joseph, director of the public education program; Tom Bryan, director of the FSM Information Office; Gregory Swartz, counsel to the FSM Commission on Future Status and Transition; Erhart Aten, governor of Truk; Kisande Sos, speaker of the Truk legislature; Iskia Sony, plebiscite commissioner for Truk; and Edward King, chief justice of the FSM.

The second trip was made from June 17 to 25, 1983 by Eugene Lee to Yap, Truk, and Ponape; Austin Ranney to Ponape; Richard Smolka to Ponape; and Raymond Wolfinger to Truk and Ponape. In this trip there were renewed discussions with most of the people seen in February, and additional discussions with Bailey Olter, who succeeded Petrus Tun as vice president of the FSM; John Mangefel, governor of Yap; Hilary Tacheliol, plebiscite commissioner for Yap; Cunes Gustaf, mayor of Dublon, Truk; Father Amando Samo, parish priest of Dublon; Mitaro Danis, senior land commissioner from Udot; Kintocky Joseph, Udot magistrate; Bethwel Henry, speaker of the FSM Congress; Resio Moses, governor of Ponape; Janet J. McCoy, High Commissioner of the Trust Territory; and Brother Henry Schwalbenberg, S.J., an American priest who taught courses in the Compact's provisions in the FSM and later in the Marshall Islands (see below).

Lee and Wolfinger observed the voting on Truk on election day, while Ranney and Smolka observed it on Ponape. All four scholars assembled in Kolonia to observe the counting. As in the cases of Palau and the Marshall Islands, most of the descriptions and analyses presented in this chapter are based upon the discussions in which the scholars participated and on documentary materials they gathered.

Preliminaries to the Plebiscite

1. *The Draft Compact and Agreements*. The terms of the Compact of Free Association and related agreements were negotiated for the FSM by its Commission on Future Status and Transition, chaired by foreign secretary Andon Amaraich, and for the United States by a team headed by Ambassador Fred Zeder, the personal representative of President Ronald Reagan for the Micronesian negotiations. Although the negotiations took considerable time and there were a number of difficult problems to resolve, the two parties signed the Compact and agreements on October 1, 1982. The announced terms produced much less public disagreement and dissension than was true of their counterparts in Palau and the Marshall Islands. This was no doubt due mostly to the fact that the documents' terms did not contain any provisions, such as Section 314 for Palau or Section 177 for the Marshall Islands, that aroused strong and vocal opposition from any organized or visible segment of the FSM's population or leaders. As we shall see later, the proposed Compact did call renewed attention to the concern in Ponape about its future relationship to the FSM and in the Faichuks about their future relationship with Truk and with the FSM, but none of these were objections to the Compact as such. In addition, the FSM's negotiators took special pains after each negotiating session to discuss the status of the negotiations with the FSM's traditional chiefs (in Ponape, the *nanmwarki* and *nañkens*) as well as with its top elected officials.

2. *The Timing of the Plebiscite*. The FSM and U.S. negotiators originally agreed upon June 14, 1983 as the date for the plebiscite.

However, the United Nations Trusteeship Council asked that the plebiscite be delayed a week to avoid scheduling conflicts for their team of observers, and the FSM, with the approval of the U.S., agreed to set the date back to June 21, where it remained.

In April 1983 the legislature of the state of Ponape requested that the plebiscite be postponed until January 1984. Their resolution stated that more time was needed for the public information program and for the finalization of the subsidiary fiscal procedures agreement. This resolution was less clearly an anti-Compact ploy than were the comparable efforts to delay the voting in Palau and the Marshall Islands (see chapters 2 and 4), and it did not succeed. After consulting with the Plebiscite Commission (see below), President Nakayama declared that such a postponement would not be in the best interests of the FSM and reaffirmed that the plebiscite would be held on June 21 as planned. In his response to the Ponape legislature, the president noted that all of the public information progrms would be completed before June 21st and that the fiscal agreements were nearly completed. He added that it would be highly desirable if the Compact could be submitted to the U.S. Congress by August 1983 so that it could be acted upon before the distractions of the 1984 U.S. presidential and congressional elections would delay congressional action, perhaps for months.

Although not publicly stated, another reason for the Ponape legislature's objection to such an early date was concern about "election overkill," stemming from the fact that the FSM had held so many recent elections: in 1983 alone there were elections for the FSM Congress, a primary and a runoff election for governor of Ponape, elections for delegates to Ponape's constitutional convention, and municipal elections in many localities. Some feared that the voters might grow weary of the whole thing and stay home on plebiscite voting day. But President Nakayama judged that delaying the vote any further would do more harm than good, and the election was held, as scheduled, on June 21.

3. The Wording of the Ballot. Since the FSM Constitution has no extraordinary-majority requirement comparable to that in Palau (see Chapter 2), there was little controversy about the wording of the ballot. Clearly there had to be an up-or-down vote on the Compact and its related agreements as negotiated; and clearly there had to be an advisory vote on what status the voters would prefer if the Compact were defeated. Consequently, the final ballot read as follows:

Official Ballot, Plebiscite on Future Political Status
Federated States of Micronesia

PART ONE

TO VOTE ON THE QUESTION OF FREE ASSOCIATION WITH THE UNITED STATES, PUT AN "X" OR OTHER MARK IN ONE OF THE TWO BOXES.

DO YOU APPROVE THE COMPACT OF FREE ASSOCIATION AND RELATED AGREEMENTS?

YES ☐ NO ☐

PART TWO

IN CASE THE COMPACT OF FREE ASSOCITION IS NOT APPROVED, THE FEDERATED STATES OF MICRONESIA AND THE UNITED STATES WILL NEGOTIATE TO REACH MUTUAL AGREEMENT ON ANOTHER FUTURE POLITICAL STATUS. YOU MAY INDICATE YOUR PREFERENCE FOR A FUTURE POLITICAL STATUS OTHER THAN FREE ASSOCIATION BY PUTTING AN "X" OR OTHER MARK IN ONE OF THE BOXES BELOW.

☐ INDEPENDENCE

☐ A RELATIONSHIP WITH THE UNITED STATES AFTER THE TRUSTEESHIP ENDS, OTHER THAN FREE ASSOCIATION.

YOU MAY DESCRIBE THAT RELATIONSHIP:

....
....
....

This ballot was quite straightforward, and, while the interpreting, counting, and tallying of answers to Part Two was, as we shall see, laborious, no one complained that the wording of the ballot was ambiguous or that it was not clear what questions the voter had to mark in order to cast a valid ballot.

The Public Information Program

1. Administration and Funding. On October 28, 1982 the Congress of the FSM adopted an act which provided that both the public information program and the voting would be supervised by a Plebiscite Commission. The commission would consist of five members, one to be appointed by the governor of each of the four states, and one to be appointed by the president of the federation. The members appointed were:

From Kosrae: Moses Mackweiung

From Ponape: Strik Yoma (who was later replaced by Delson Ehmes)

From Truk: Iskia Sony

From Yap: Hilary Tacheliol

Apppointed by the president: Petrus Tun, who was selected by the others to serve as chairman of the commission.

The FSM Congress directed the commission to plan and coordinate the public information program; to plan, supervise, and administer registration and voting; to deal with any complaints about the fairness of the public information program or the voting; and to report the official results to the president of the federation for transmittal to the states and to the Congress for ratification.

At its first meeting, the commission appointed one of the federation's most able young civil servants, Ihlen K. Joseph of Ponape, to organize and administer the public information program.

The U.S. government agreed to provide a total of $1 million to the FSM to conduct the public information program and the plebiscite. The commission decided that approximately half of this sum would be allocated to the four states and half would be retained by the commission. The special problems arising from the dispersion of so few people over such vast expanses of ocean are well illustrated by the costs of sending the public information teams to the outlying islands. In the state of Truk, for example, the cost of sending the teams on the M/S Micro Trader to the Upper and Lower Mortlock islands, which lie the better part of 200 miles southeast of the capital of Moen, was $2,150 per day for five days. A much smaller boat, M/S Kokotu, was used for 188 days at $200 per day, plus eighteen drums of diesel fuel. In addition, each member of the team had a per diem allowance, and the teams needed to take along books, teaching materials, gasoline and kerosene, flashlights, batteries, foodstuffs, and so on. It was an expensive program, but most people, including AEI's scholars, felt that the program was necessary and the money was spent appropriately.

2. Translations of the Compact. The English version of the Compact and related agreements is 275 pages in length, containing both statements of general principle and detailed legal statements on such complicated subjects as finance and taxation, international security, marine sovereignty, citizenship, and telecommunications (see the detailed summary in Chapter 2). Translating it into each of the eight indigenous languages -- Trukese, Yapese, Ponapean, Kosraen, Ulithian,

Woleian, Kapingi, and Nukuoran -- was not only the most expensive single activity undertaken by public information program, it was also the most ambitious translation project ever conducted in Micronesia with the exception of translations of the Bible and of the 1978 constitution. Indeed, the published translations of the Compact nearly doubled the total amount of material published in the indigenous languages.

The public information program employed a number of people, mostly schoolteachers, who were fluent in both English and one of the indigenous languages. Each translating team went over the English version line by line translating it into the indigenous language as they went, frequently debating the proper local equivalent for an English word or phrase. They often paused to translate the indigenous-language version of a sentence or a paragraph or a section back into English and checked the reverse-translation with the original English version as a check upon the accuracy of their original translation.

The project unavoidably took many weeks. Was it worth the effort and expense? From one point of view it was not: only a few hundred persons gave more than the most casual attention to the translated documents; indeed, only 200 copies each were printed in the two least-spoken languages, Kapingi and Nukuoran. From another point of view, however, the project was well worthwhile: the very existence of the eight printed translations showed clearly that the Compact was a Micronesian as well as an American agreement, and it was available to all citizens of the FSM whether they could read English or not. Even if only a few availed themselves of the opportunity, it had to be there for everyone. It was an effort that had to be made, and it was made well.

3. Activities in the States. In each of the FSM's four states, central coordinators were appointed to plan and administer the information program. While the organization differed in detail from one state to another, the overall pattern was much the same. In Truk, for example, five major activities were carried on: task force community visits, radio program series and interviews, community participation programs, training programs, and information activities relating to the plebiscite itself.

Radio broadcasts were used wherever possible. They involved live broadcasts of task force meetings, which were also taped and edited for future use. Statements by President Nakayama and Secretary Amaraich were broadcast. There were also interviews with members of Congress and local leaders familiar with the Compact.

Where the equipment was available, some of these activities were also videotaped and broadcast or played on videocassette machines. For example, a community television station that serves approximately half of Yap island repeatedly broadcast taped speeches and interviews about the Compact. In Moen, the capital of Truk, there is no television station, but about 100 persons have videocassette machines. These were used for occasional neighborhood gatherings and provided a basis for additional discussion of the Compact.

Especially noteworthy was a statement videotaped by U.S. President Ronald Reagan, in which he expressed his strong support for the Compact and his willingness to present it favorably to the U.S. Congress if the people of the FSM approved it in the plebiscite. This tape was shown repeatedly on Yap television and the audio portion was widely broadcast elsewhere. It was also the sole public presentation by any U.S. official during the public information program.

As one would expect in a culture which has traditionally relied mainly on oral communications and has made little use of written communications, printed material was much less important than radio and television broadcasts. The bi-weekly National Union, the official newspaper of the FSM, printed in English, regularly carried news of official statements and actions of the Plebiscite Commission and the Commission on Future Status and Transition concerning the forthcoming election, but little commentary on the Compact's contents. In Yap, Governor Mangefel initiated a bi-lingual newspaper in April 1983 with the title Mogethin/What's Up?, which carried commentary about the Compact along with other public notices. Comparable unofficial newsletters were available in Ponape and Truk, but the combined impact of the print media was far smaller than that of radio, television, and, above all, personal conversations.

4. The "Micronesian Seminar". In addition to the government-conducted public information program, a major education effort, operating under the title of "The Micronesian Seminar," was mounted by the Catholic Church of the Caroline and Marshall Islands, with headquarters in Truk. Brother Henry M.Schwalbenberg, S.J. (see above) prepared a series of memorandums on various aspects of the Compact, including issues relating to Palau and the Marshall Islands, some of which were subsequently published in Pacific Magazine. In addition, Brother Henry presented a full-length course on the Compact at the Community College of Micronesia in Ponape. This resulted in a

detailed series of class notes which were duplicated for distribution throughout Micronesia.

The resulting memorandums and class notes constituted the only major analysis of the Compact made outside the government's public information program. It was widely praised by a number of observers, including those from the United Nations, as complete, objective, factual, fair, and instructive. Its general tone is illustrated by the following excerpts of the short summary prepared and distributed by Brother Henry and reproduced as an annex to the report of the United Nations observers:

SUMMARY OF THE COMPACT OF FREE ASSOCIATION MADE BY BROTHER HENRY SCHWALBENBERG[2]

I. The compact is about three things:
   - (a) Political - The Micronesian people, acting through their own constitutional governments, are self-governing.
   - (b) Economic - In recognition of their special relationship and to assist in efforts for economic self-sufficiency, the United States will provide the bulk of *money* Micronesia needs for the next 15 years.
   - (c) Military - the United States has *full* authority and responsibility for security and defence matters in Micronesia.

II. Military
   - (a) The United States has *full* authority and responsibility for defence and security matters in Micronesia which includes:

Rights	Duty
(i) Denial (until mutually terminated)	(i) Defend Micronesia (until mutually terminated)
(ii) Bases, no real bases in the FSM except the Coast Guard station in Yap (10 years) and civic action teams in the four states (15 years)	
(iii) Access, which includes the transit and storage of nuclear weapons through and in Micronesian air, sea and land. Since the U.S.	

has no "real" bases in the FSM they have no place to store nuclear weapons even though they have the legal right.

(b) Micronesia cannot interfere with this authority, although there are some safeguards such as environmental standards, some restrictions on nuclear weapons, and the right to appeal directly and personally to the United States Secretary of Defense and/or the United States Secretary of State for a change of United States policy.

III. Economic

(a) The Federated States of Micronesia (population 76,050) will receive money over the next 15 years for the following categories:

		(Million U.S. dollars)
General grants		755.00
Current	453.00	
Capital	302.00	
Specified grants		71.00
Energy	42.00	
Communications	15.00	
Civic action teams	14.00	
Block grants (social services)		105.00
Military impact payments (Coast Guard, Yap)		.16
Total		931.16

(b) The Compact also provides for a few federal programs, primarily postal, weather and disaster assistance.

(c) To help Micronesia become more self-reliant, the Compact reduces the level of U.S. assistance over the 15 years. To make up for lower levels of money, the Compact provides other ways for Micronesia to earn money, such as:

- (i) Local economic development, trade and tax benefits, money for infrastructure and development projects.
- (ii) Foreign affairs. The U.S. recognizes and supports the rights of the Micronesian governments to negotiate fishing agreements and other economic assistance from foreign countries like Japan and the United Kingdom.
- (iii) Immigration to the U.S. Micronesians can go to the U.S., look for jobs and stay as long as they want. They will probably send part of their salaries back home to their families. Micronesians, if qualified, can also join the armed forces of the United States.

IV. Political

(a) The Micronesian governments operate under their own

constitutions and run their own domestic affairs.
(b) The Micronesian governments can also conduct their own foreign affairs, but they must tell the U.S. government what they are doing.
(c) The Micronesian governments promise, under the Compact, not to interfere with U.S. military authority.

Differences between commonwealth, free association and independence

	Commonwealth	Free association	Independence
Political	Micronesia has local government but is under the Constitution and many of the laws of the U.S. Micronesia is part of the U.S. forever.	Micronesia is self-governing under its own Constitution, but cannot interfere with U.S. military authority. In the future, Micronesia could still choose independence or commonwealth.	Micronesia is self-governing under its own Constitution. Micronesia would be on its own forever.
Economic	Micronesia becomes part of the U.S. economy which probably means more money per person, federal programs and better inflation adjustment.	The U.S. provides Micronesia with most of the money it needs to run its government and social services, and to start economic development projects.	Micronesia has to provide itself with most of its own money. The U.S. would probably give money for economic development projects but not much if any to run the government and social services.
Military	The U.S. has full defence authority, including the right to take land if needed. This lasts forever.	The U.S. has full defense authority but does not have the right to take land. Except for denial, all U.S. defence rights are limited to a definite time period.	Micronesia has to provide for its own defence, probably in the form of a mutual security treaty where the U.S. would defend Micronesia in exchange for denial rights for an indefinite time.

On the basis of work of this sort, and encouraged by the lay leadership of his church in Ponape, Brother Henry mounted an amibitious education program, supplementing the activities of the offical public information program task forces. Starting with seven teachers who met with Andon Amaraich and other experts on the Compact in April 1983, the group then made a presentation to fifty persons selected by the lay deacons of the several parishes on Ponape. This larger group went through its own training sessions, which concluded with an examination on the Compact and a trial presentation before their fellow "students."

In May, the group of fifty was divided into six teams, each of which visited an assigned group of villages on Ponape, spending two days in each place. The meetings, organized by the lay leadership of the parishes, combined social events and discussions concerning the Compact. In general, Brother Henry felt that the effort was a success, a conclusion also reached by AEI's scholars and the U.N. observers. The U.N.'s report said the Micronesia Seminar "proved very useful [to the political information program]."[3] Brother Henry and his associates wanted to mount a similar effort in Truk, but it did not work out, mainly because the church's lay leadership there was not as strong as in Ponape.

5. Evaluation of the Public Information Program. The public information program in the FSM faced most of the problems experienced by the comparable programs in Palau and the Marshall Islands: a great deal of the money and effort was invested in translating, printing, and distributing copies of the Compact despite the fact that the socety's traditions of oral rather than written communications meant that very few were read in any detail; and the anomaly of having the government,

which had negotiated the Compact and thus was bound to favor it, also conduct the public information program. Nevertheless, AEI's scholars concluded that the program was organized effectively, conducted conscientiously, and was generally factual, objective, and fair. Moreover, Brother Henry's Micronesian Seminar made a major contribution, especially valuable because it was conducted by private persons with no special axes to grind. All in all public information in the FSM was, if anything, even better than the comparable programs in Palau and the Marshall Islands.

The Campaign

Unlike Palau and the Marshall Islands (see chapters 2 and 4), the FSM had no plebiscite "campaign" in the sense of "Yes" and "No" organizations making stump and radio speeches, distributing literature, putting up posters, holding rallies, or mounting any of the other activities we ordinarily think of as making up "campaigns." President Nakayama, Secretary Amaraich, and a few other leaders of the FSM government made a few brief statements in favor of the Compact, and Secretary Amaraich participated frequently in the public information program. But the pro-Compact forces did not "campaign" in the usual sense of the word. A few opponents of the Compact, notably Edwell H. Santos, the speaker of the Ponape state legislature, spoke critically of the Compact in broadcasts on the government radio station. Otherwise there was almost no public pro-and-con discussion, and the political temperature right up to voting day was far lower than in Palau and the Marshall Islands.

Yet the results, especially in Ponape (see below), revealed that there was a good deal of opposition to the Compact even though few of the people who felt that way publicly stated their views and none formed an opposition organization. The results in Ponape were a considerable surprise to most observers, including members of the national government; and they suggested that there had been, at least in Ponape, a good deal of private discussion of the Compact and a good deal of opposition to it. In hindsight, it appears that a number of the nanmwarkis and nankens in Ponape had quietly passed the word that the Compact was not a good thing for Ponape, and their followers voted accordingly.

The Issues. The same hindsight reveals that several issues concerned the voters even though those issues surfaced in discussions in the public information program rather than in an organized Yes-v.-No campaign. From his participation in dozens of meetings on the Compact in Ponape, Brother Henry Schwalbenberg concluded that town Ponapeans -- the residents of Kolonia -- were most concerned for the financial welfare of their families and especially for the future opportunities for their children. They wanted to know whether there would be changes in the levels of U.S. funding, whether Ponape's share of the funding would go up or down, and whether there would be cuts in specific programs, such as Head Start and legal services.

On the other hand, Ponapeans living in the small rural communities outside Kolonia, such as Madolenihmw, Kitti, Net, and Uh, had different concerns. According to Brother Henry:

> "Village Ponapeans. . .tended to concentrate on four not totally unrelated topics: a general and at times irrational fear of the military; the demeaning denial provisions of the Compact; an almost anguished desire to keep the old ways; and

a now-or-never hope for independence. Unlike the town dwellers, rural Ponapeans did not see U.S. financial assistance as supporting their way of life, but rather as eroding it. Also rural Ponapeans, perhaps naively, did not perceive an overwhelming economic dependence on the United States."[4]

Another concern appeared to be especially strong among older Micronesians, many of whom personally remembered that Truk had been the scene of a major battle in 1944: "Will the U.S. military play a bigger role under the Compact? Can we keep the big weapons out? Will the FSM become a battleground in some future U.S. war?"

A third group of concerns important to many FSM voters had little to do with the language of the Compact or its related agreements. Rather they stemmed from the internal separatist feelings and movements that are second only to economic development as the greatest problem facing the FSM. After all, the Federated States of Micronesia are striving not only for a new legal status but also for true nationhood and the basic unity and loyalties among all its citizens that will make such nationhood possible when the FSM is no longer part of the Trust Territory. Divided, as the Micronesians are, by thousands of miles of open water, eight indigenous languages, a number of distinct cultures, and centuries of being ruled by four foreign nations of quite different institutions and attitudes, it is not surprising that regional loyalties loom large and Micronesian nationalism is tenuous. Morever, the fact that three other parts of the Trust Territory -- the Northern Marianas, Palau, and the Marshall Islands -- have insisted upon and won separate status has made a number of people in some parts of the FSM feel that they too should have and can probably get separate status from the Federation.

These separationist tendencies are most important in Ponape. We commented earlier on Ponapean separatism, and we should add here that a number of persons in the FSM told AEI's scholars that the strong sentiment for Ponapean independence from the FSM plays a major role in all FSM politics. It was a considerable factor in the plebiscite voting even though it did not surface during the pre-election public discussions of the Compact. There is no question that a considerable number of Ponapean leaders and citizens continued to fear that the FSM will always be dominated by Truk, that the Compact would, by giving more power to the FSM government, increase still further the power of Truk over Ponape and perhaps make it impossible for Ponape ever to achieve its rightful place in the Pacific sun. Accordingly, it seems reasonable to surmise that many Ponapeans saw a vote against the Compact as a way of sending a signal to Truk, the FSM government, and the U.S. that the prime concern of Ponapeans is that the identity and interests of their state should not be submerged any more than they already are.

In this nation of many islands, moreover, the pressures for autonomy are not confined to conflicts among the four states. The plebiscite was also affected by another separatist movement, the longstanding attempt of the Faichuk Islands, which lie within Truk Lagoon within sight of the Trukese capital of Moen and contain about one-quarter of Truk's population, to become a separate state with a status equal to that of the existing four states.

The Faichuk story has its origins in traditional rivalries among clans and chiefs within Truk Lagoon. In recent times the issue has been manifested by the repeated requests of the leaders of the Faichuks to become a state separate from Truk. In 1982 this movement became so strong that it gained the support of the Truk legislature and, surprisingly, the FSM Congress, but it was vetoed by President Nakayama on the ground that there is a great need to continue building unity and nationhood among all parts of the FSM as a necessary precondition for establishing and maintaining true home rule. Separate status for the Faichuks, he said, would be a major setback for that objective. No serious effort was made to override President Nakayama's veto, but the issue was far from dead.

In the Faichuks as in Ponape, the Compact became a surrogate for the quite different issue of local "home rule" -- independence not so much from the United States as from other Micronesians. At stake were the prerogatives of the traditional chiefs and magistrates, local patronage in jobs and public improvements, the ambitions of local legislators for higher office, and resentment against ruling the Faichuks by decisions made in Moen. The strategy of the Faichuk separatists, announced just three days before the election, was to boycott the plebiscite altogether rather than to vote No on the Compact. And boycott they did. Turnout in the Faichucks was very light: of the islands' 6,218 registered voters, only 1,149 voted -- impressive evidence of the influence of the Faichuks' traditional leaders.[5] The Faichuk boycott had a significant effect on depressing turnout in Truk and the whole FSM: if the Faichuks had voted at the same rate as the rest of Truk, the turnout in Truk would have risen from 49.7 percent to 59.0 percent. It also served to remind all concerned that the FSM has yet to overcome a number of its internal separatist tendencies, and building a nation after trusteeship has ended may well demand as much effort and leadership as ending trusteeship.

Election Experience and Rules

1. Previous Election Experience. Like Palau and the Marshall Islands, the FSM and its constituent states had considerable experience in conducting elections prior to the 1983 plebiscite. We have noted previously that Ponape, Truk, and Yap were all original districts of the Trust Territory, and as such each had elected members to the Congress of Micronesia in 1965, 1966, and in even-numbered years from then until 1978. All three districts elected members of their legislatures every two years since 1957 (Truk), 1958 (Ponape), 1959 (Yap), and 1977 (Kosrae). The four districts all participated in the 1978 referendum on the Micronesia-wide constitution, and, as the four districts which approved the constitution, they held their first elections for members of the FSM Congress on March 27, 1979. On March 8, 1983, less than four months before the plebiscite on the Compact of Free Association, the four states held their second round of elections for the FSM Congress. Consequently, each of the states had a body of election laws and a corps of experienced election administrators, and it was relatively easy for the federal government to use this experience in establishing the rules and selecting the administrators for the 1983 plebiscite.

2. The Rules. As we noted earlier, on October 28, 1982 the FSM Congress adopted an act providing for the administration and supervision of all aspects of the 1983 plebiscite by the five-member Plebiscite Commission (see above).

However, while the plebiscite was conducted under rules laid down by the national government, the administration of those rules was largely left up to the states. Each of the commissioners appointed by the governors of the states (Moses Mackweiung for Kosrae, Delson Ehmes for Ponape, Iskia Sony for Truk, and Hilary Tacheliol for Yap) served as the plebiscite commissioner for his state. Each commissioner appointed a number of persons to supervise registration, preside over the polling places, and count the votes in the state, and the pattern of state administration of federal election laws characterized all parts of the election process.

Any citizen of the FSM who was eighteen years of age or older on the day of the plebiscite, who lived in a state of the FSM or, if living outside, considered the FSM to be a permanent home, and who was not mentally incompetent or serving a sentence or under parole for a felony was eligible to vote.

Such persons could register to vote either prior to election day or on the day itself. Before election day they could file a brief affidavit, certified by two other registered voters, and signed by an officer authorized to administer oaths. On election day a previously-unregistered person could register at the polling place, and the requirement of swearing the affidavit before an offcial authorized to administer oaths was waived. Furthermore, for those citizens voting absentee and not previously registered, the regulations were amended to provide that an application for an absentee vallot could serve as an official registration form. The underlying idea, of course, was to make registration as easy as possible so as to get the largest possible turnout in the plebiscite.

Voters could vote in one of three ways: in person at the polling place in the district where they were registered; in person at a polling station in a district where they were not registered; and by absentee ballot. Most voters voted the first way. They came to the polling place, signed opposite their names on the registration role, and were given a ballot. The voting place was typically a table or a schoolroom chair with a desk arm set at the far end of the room away from the election officials (although AEI's scholars did observe some voters using the exterior walls of the polling places as surfaces for marking their ballots). At first glance several outside observers were disturbed by such practices since they seemed to violate the requirements for guaranteeing the secrecy of the ballot; yet it soon became clear that everyone at the polling places respected everyone else's privacy, and the voter's ballot was just as secret as if it had been marked in an enclosed booth. After marking their ballots the voters deposited them in locked boxes, which were delivered to and opened at the central election headquarters in the state capital after the polls had closed. Special arrangements were made for people who voted in districts other than those in which they were registered. For example, many persons working in Moen have their permanent residences on other islands within Truk Lagoon. They were asked to vote at central polling places in Moen and to deposit their ballots in specially-designated boxes bearing the names of their home islands. These ballots were then added to the ballots cast on those islands and all were counted together.

Special polling places were also established in such off-island locations as Saipan, Koror, Guam, Ebeye, Majuro, and Hilo and Honolulu in Hawaii. Separate ballot boxes for each of the four states were provided at each of these locations. Votes were cast two or three days prior to June 21, and the ballots were flown to the respective state capitals for inclusion in the count. Persons living off-island were also permitted to mail absentee ballots to the plebiscite commissioners of their states, but most chose to vote in person at the special polling places.

The scattering of voters among many small dots of land separated by vast expanses of ocean was even greater in the FSM than in Palau or the Marshall Islands, and the delivery and collection of ballots in these circumstances posed logistical problems unknown to most election officials in the world. For example, the ship delivering ballots to the polling places in the outer islands of Yap had to make stops at eighteen locations in a tour of several hundred miles. After the votes were cast, the ship reversed its course, stopped at each of the islands to pick up the ballot boxes, and brought them to Yap for counting -- a journey that took over ten days from beginning to end. The procedure was expensive as well as lengthy, but it was unavoidable, it was brought off smoothly, and it accomplished its purpose of giving every citizen of Yap a full opportunity to vote on the Compact. Similar operations with similar costs and benefits took place in the other states.

Palau and the Marshall Islands are unitary polities, and in both the plebiscite votes cast in all localities were counted were all counted in the national capitals. The FSM is a federation, however, and each state's plebiscite votes were counted in its capital and the results were certified to the federal Plebiscite Commission by its plebiscite commissioner. In Kosrae, Ponape, and Yap the counting went smoothly. It started shortly after the polls closed and continued most of the night. In the presence of outside observers, the ballot boxes were opened, the number of ballots cast and not cast were counted and reconciled with the number of ballots originally delivered to each polling place; two officials scrutinized each ballot and announced its choices to the tallying officials, who made the appropriate marks on their tally sheets. The process was made laborious by the need to interpret what each voter had done on Part Two of the ballot and to ensure that the vote was properly tallied. But the counters kept at it, and the final count was both fair and accurate.

In Truk, however, there were problems. The counting of the votes began in the legislature's building at 9:00 p.m. on June 21st and went on all night. However, the legislature was due to convene the next morning, and so the ballot boxes had to be moved to the Public Affairs building. The process of tabulating and counting was slowed, and there was some confusion in the transfer of the boxes. At this point the United Nations observers remonstrated with the Trukese officials about the inefficiency and the risk of fraud and error, and the Trukese increased the number of counters and talliers and handled the boxes more carefully. If the vote had been close in Truk these administrative lapses might have cast a real cloud on the legitimacy of the count; as it was, however, the majority in favor of the Compact was so large (95 percent) that none of the observers felt that the administrative bloopers made the vote invalid. Many did feel, however, that the decentralization of the count had its costs as well as its benefits.

The Plebiscite Results

1. Turnout by States. The turnout for the FSM and each of its states is shown in Table 3-1:

(Table 3-1 about here)

Table 3-1 shows that the turnout rate for the entire FSM was 63.2 percent of the registered voters. This was not only considerably lower than Palau's turnout of 88.1 percent (see Chapter 2) and the Marshall Islands' turnout of 83.5 percent (see Chapter 4), but it was lower than in most elections in the FSM: for example, the turnout in the 1978 referendum on the FSM Constitution was 76.5 percent (see Chapter 1), and the turnout in the elections for members of the FSM Congress held on March 8, 1983, just over three months before the plebiscite on the Compact, was 74.1 percent. And since, as we have seen, there had been so little public conflict over the Compact in the months preceding the plebiscite, few observers were surprised that the turnout was this low.

The differences in turnout among the four states are also worth noting. Ponape had the highest turnout rate, an impressive 79.7 percent, compared with 57.2 percent in Kosrae and 53.8 percent in Truk. Only Yap came close to Ponape, with 72.1 percent. Most observers concluded that the high turnout in Ponape and the relatively low turnouts in Truk and Kosrae resulted in part from the Faichuk boycott and in part from the fact that, as the results showed, there was a lot of opposition to the Compact in Ponape and very little in any of the other states.

2. Votes on the Compact: The Overall Result. The votes in the FSM and in each of the states on both parts of the ballot are summarized in Table 3-2:

(Table 3-2 about here)

The most striking fact evident in Table 3-2 is that the states of Kosrae, Truk, and Yap all voted overwhelmingly in favor of the Compact, but the state of Ponape, by a narrow margin (51.1 percent), voted against it. The difference between Ponape and the other states is emphasized by the fact that Ponape cast 4,437 of the total of 5,348 No votes on Part One cast in the whole FSM -- 83.0 percent of the total. In the other three states the combined votes were 15,873 Yes to 911 No, a majority of 94.6 percent for the Compact. So the differences between Ponape and the other states was one of the most striking features of the outcome, and the Ponape results merit closer attention.

3. Votes on the Compact: The Results in Ponape. Brother Henry Schwalbenberg's analysis suggests that the results in Ponape should be explained mainly in terms of a conflict between the ethnic Ponapeans living in the rural municipalities on the one hand and the residents of Kolonia, Sokehs, and the outer islands on the other. The returns from each of these areas are shown in Table 3-3.

(Table 3-3 about here)

The figures in Table 3-3 show strong Yes majorities in Kolonia, Sokehs, and the outer islands, and equally strong No majorities in Ponape's rural municipalities. Added together, the rural areas cast 49 percent of the state's votes, and had a collective No majority of 66 percent. Kolonia, Sokehs, and the outer islands cast 36 percent of the votes, and had a collective Yes majority of 65 percent.

Why these differences? Brother Henry makes a convincing case for the proposition that the Compact split the two groups along both economic and ethnic lines. Kolonia is Ponape's only town and the main site of its commerce, employment, and wealth as well as the seat of the state and national governments. Its economic viability, like that of all Micronesian towns, rests almost entirely on U.S. grants to finance the state and national governments. Hence Kolonia voted strongly for the Compact, and, on Part Two, joined the outer islands as the only areas that preferred closer ties with the U.S. to independence as an alternative to the Compact.

Also, much of Kolonia's population consists of ethnic non-Ponapeans from the outer islands of Kapingamarangi, Ngatik, Nukuoro, Oroluk, and Mokil who have migrated to Kolonia in search of better jobs. Like their relatives remaining on the outer islands (who voted 71 percent Yes on the Compact), they supported the Compact.

Economically, the municipality of Sokehs is similar to Ponape's other rural areas, but ethnically it is not. The original Ponapean inhabitants of Sokehs rebelled against German rule in the early 1900s and were deported. The area was gradually repopulated mainly by immigrants from Truk's Mortlock Islands and Ponape's outer islands, and it remains ethnically non-Ponapean as well as rural. Brother Henry adds that Secretary Andon Amaraich, the FSM's chief negotiator for the Compact and one of its most effective advocates, is himself a Mortlockese and thus was able to speak directly in their own language to large gatherings in Sokehs prior to the plebiscite.

Brother Henry sums up the situation in Ponape thus:

> "Local voting patterns seem symptomatic of the rapid social and economic change occuring in Ponape. Localized economic growth has led to a town-versus-village rift. The influx of non-ethnic Ponapeans to this town and on to high political positions in the national government has added a racial element to this growing estrangement. These tensions are only exacerbated. . .by the discord between the state and national leader-

ship. . . .Since the early '70s traditional Ponapean leaders have been on record as opposing free association and favoring independence. These leaders perceive growing westernization as eroding the traditional foundations of their social prestige and influence. This position favoring independence by traditional ethnic Ponapean leaders may go some way in explaining the cohesiveness of the vote against the Compact among rural ethnic Ponapeans."[6]

4. Votes on the Alternatives. Table 3-2 shows that a heavier vote was cast in the FSM on the advisory question in Part Two than was cast in either Palau or the Marshall Islands: a total of 25,469 votes were cast on Part One, and 19,218 (75.5 percent as many) on Part Two. This was far higher than the 56.5 percent who voted on the advisory question in Palau and higher still than the 29.3 percent who voted on it in the Marshall Islands. Perhaps this resulted from the fact that there was no FSM counterpart of Palau's Section 314 or the Marshall Islands' Section 177 to divert attention from the question of what status the people wanted if the Compact was rejected. The people of the FSM were, after all, voting after the people of Palau had, in effect, rejected the Compact, and the question of where that left the Palauans and what they might hope for in the future may well have been on the minds of the leaders and voters in the FSM as they contemplated their own future if the Compact were defeated.

In any case, Table 3-4 shows the support given to the various alternatives in Part Two by the FSM's voters:

(Table 3-4 about here)

During the negotiations and the plebiscite campaign, the FSM's leaders, particularly President Nakayama and Secretary Amaraich, took the position that independence was the best alternative on Part Two -- in part because it was the most dignified and in part because if the Compact were rejected a large vote for independence would strengthen the hands of the FSM in future negotiations with the U.S. The figures in Table 3-4 make it clear that most Micronesians agreed with President Nakayama's statement after the voting that "On Part Two of the Ballot, 'Independence' was chosen by the FSM voters as the only viable alternative."[7] Of the 19,218 who voted on Part Two, 13,924 (72.5 percent) marked their preference for independence if the Compact were defeated. Another 2,587 (13.4 percent) marked "other relationship" but did not describe which one they preferred. And the remainder scattered their preferences among commonwealth status (6.9 percent), U.S. territorial status (4.3 percent), and U.S. statehood (2.9 percent).

Three of the four states strongly supported the independence alternative. Its majority over the other choices was 97 percent in Truk, 77 percent in Yap, and 76 percent in Ponape. It was also the most preferred choice in Kosrae, but there its plurality was only 44 percent.

The voting on Part Two shed considerable light on how the Micronesians feel about their future, but the overriding fact emerging from the plebiscite voting was that the great majority of the people in Kosrae, Truk, and Yap, but not in Ponape, approved the Compact of Free Association as the best available basis for that future.

The Fairness of the Plebiscite

The FSM's conduct of the public information program and the voting had a few lapses. The low attendance at the public information program's local meetings was disappointing, although perhaps inevitable given the lack of public controversy about the Compact. But the educational materials and the meetings were conducted with energy and objectivity, and they adhered scrupulously to the mandate to be objective and factual rather than to advocate Yes votes. Moreover, Brother Henry Schwalbenberg's seminar on the Compact and his short summary of its main provisions were a substantial contribution to popular understanding. The absence of public controversy between the Yes and No forces made the issues less prominent than they might have been, and it would have been better if the considerable opposition in Ponape had been publicly discussed rather than left to private conversations among individuals and between traditional chiefs and their followers. Yet if the pro and con forces did not wish to make their cases publicly, there was no democratic way they could be forced to do so. Fairness in campaigning means an equal opportunity for all sides to be heard, and outside observers generally agreed that such opportunities were fully available in the FSM.

The boycott of the election in the Faichuks was unfortunate, but it was the choice of the area's leaders and their followers, and it is hard to see how it could have been prevented. Certainly no official of either the FSM government or the government of Truk tried to discourage voting in the Faichuks in any way; quite the opposite, in fact. The careless administration of the storage, movement, and counting of the ballots in Truk might have caused more concern if the vote had been at all close there; but as it was, no observer believed that Truk's lapses were due to anything but inefficiency or that they had a significant impact on the outcome.

Accordingly, AEI's scholars and the United Nations observers concluded that the FSM's public information program was fair to all points of view and that the final vote constituted an accurate expression of the will of the FSM's people -- including the people of Ponape.

After the Plebiscite

The FSM Constitution and the FSM Congress's act of October 28, 1982 stipulated that the Compact would be considered approved by the FSM after the completion of three steps: (1) approval by an FSM-wide majority of the voters in the June 21 plebiscite; (2) approval by majorities of the legislatures in at least two-thirds (three out of four) of the states; and (3) approval by a two-thirds majority (ten out of fourteen) of the members of the FSM's Congress.

In early July, the Plebiscite Commission certified to President Nakayama the outcome of the plebiscite (as we have shown it in Table 3-2). On July 13 the president officially notified the four state legislatures of the outcome, and requested them to act on the Compact as soon as possible.

Not surprisingly, each of the state legislatures then proceeded to vote as the state's voters had voted in the plebiscite:

> On July 29 the Truk legislature voted 21-1 to ratify the Compact.
>
> On August 12 the Yap legislature voted unanimously to ratify.
>
> On August 17 the Kosrae legislature voted unanimously to
>
> On September 2 the Ponape legislature voted 17-2 not to ratify.

During the ratification period there was some concern about whether the Compact would be able to muster the required two-thirds vote in the FSM Congress. After all, Ponape has four votes in the Congress, and if all four were to be cast against the Compact -- a not-unreasonable expectation in view of the negative majorities in both the plebiscite and the state legislature -- then all of the other members would have to vote in favor of the Compact, and an abstention or absence by just one would be enough to defeat the Compact despite the overwhelming FSM-wide popular majority for it in the plebiscite.

In the event, those apprehensions turned out to be entirely unjustified. On September 2, a short time after the Ponape legislature had voted, the FSM Congress voted unanimously to approve the Compact. Senator Pedro Harris, who had been elected to the Congress from Ponape in the July 15 election, explained his vote to ratify the Compact thus:

> "The Compact represents to some of us in Ponape a first step toward self-determination, giving us the opportunity to seek and fulfill our values and beliefs. This is the 'Yes' vote expressed in Ponape and the FSM.
>
> "Those who vote 'Yes' believe that from here we can iron out the differences with the United States, but most importantly, we are going to share that self-determination together as Yapese, Trukese, Ponapeans, and Kosraeans.
>
> "Our legends tell us that we are one people; now we are given this opportunity to remake our selves again as one people. This is the most valuable aspect of the Compact.
>
> "As a representative of the State of Ponape that voted 'No', and at the same time a lot of people voted 'Yes', I cast

my vote with those who voted 'Yes', with a great deal of respect for those who voted 'No.'[8]

After the vote, President Nakayama on September 8 sent a letter to President Ronald Reagan notifying him that the FSM had completed its ratification of the Compact. It was the first of the three Trust Territory jurisdictions to do so. It was now up to the United States to fulfill its part of the bargain.

Footnotes for Chapter 3

1. Francis X. Hezel, S.J., The First Taint of Civilization (Honolulu: University of Hawaii Press, 1983), pp. 109-170; and Francis X. Hezel, S.J. and M. L. Berg, eds., Micronesia: Winds of Change (Saipan: Trust Territory of the Pacific Islands, 1980), passim.

2. Report of the United Nations Visiting Mission to Observe the Plebiscite in the Federated States of Micronesia, Trust Territory of the Pacific Islands, June 1983 (United Nations Document T/1860, 1984), pp. 27-30.

3. Ibid., p. 3.

4. Henry M. Schwalbenberg, S.J., "Independence and Unity or Money: The Plebiscite in the FSM," Micronesian Seminar Memorandum #10 (January 1984), p. 15.

5. Ibid., Table 3, p. 19.

6. Ibid., pp. 9, 12.

7. National Union, July 15, 1983, p. 4.

8. National Union, September 15, 1983, p. 4.

Table 3-1

Voter Turnout by States,
FSM Plebiscite, June 21, 1983

State	Number of registered voters[a]	Votes cast on Part One of the ballot	Voter Turnout percent	Votes cast in Elections of March 8, 1983	Voter Turnout Percent
Kosrae	2,628	1,503	57.2	1,732	65.9
Ponape	10,908	8,694	79.7	9,533	87.4
Truk	22,136	11,902	53.8	15,561	70.3
Yap	4,866	3,507	72.1	3,202	65.8
FSM Totals	40,538	25,606	63.2	30,048	74.1

Source: *Report of the United Nations Visiting Mission to Observe the Plebiscite in the Federated States of Micronesia, Trust Territory of the Pacific Islands, June 1983* (United Nations Document T/1860, 1984), p. 16.

[a] The figures given for Truk and Yap include those persons who registered to vote on the day of the plebiscite; the Ponape and Kosrae figures are the pre-plebiscite registration totals.

Table 3-2

Votes by States, FSM Plebiscite, June 21, 1983

	Part One			Part Two					
State	Yes	No	Per cent Yes	Independence	Other rel. w/U.S.	Commonwealth	U.S. Territory	Statehood	Other, or no description
Kosrae	1,325	172	88.5	401	793	211	124	173	285
Ponape	4,248	4,437	48.9	4,767	2,004	821	424	278	481
Truk	11,261	538	95.4	7,252	1,655	96	92	38	1,429
Yap	3,287	201	94.2	1,504	732	191	180	79	392
FSM TOTALS	20,121	5,348	79.0	13,924	5,184	1,319	820	568	2,587

[a] A total of 4,771 ballots on Part Two were unmarked and not counted.

Source: Report of the United Nations Visiting Mission to Observe the Plebiscite in the Federated States of Micronesia, Trust Territory of the Pacific Islands, June 1983 (United Nations Document T/1860, 1984), pp. 14-15.

Table 3-3

Votes by Municipality, State of Ponape, FSM Plebiscite, June 21, 1983

Municipality	Total Votes Cast	Part One Percent Yes	Part Two: Percent Voting for Independence		
			Independence	Closer Ties to U.S.	Blank or Void
Kolonia	789	61.7	29.4	44.7	25.9
Rural Municipalities					
Sokehs	1,364	62.0	44.1	35.3	20.5
Madolenihmw	1,169	38.9	69.3	17.5	13.5
Kitti	1,153	31.8	75.8	8.9	15.4
Net	934	26.9	84.4	9.2	6.4
Uh	982	37.5	82.5	8.9	8.5
Outer Islands	948	70.7	16.9	65.2	17.8
Absentee					
On-island	1,191	56.5	37.8	37.8	24.4
Off-island	155	85.2	23.9	56.8	19.4
State Totals	8,685	48.9	54.8	28.5	16.7

Source: Henry M. Schwalbenberg, S.J., "Independence and Unity or Money: the Plebiscite in FSM," Micronesian Seminar Memorandum #10 (January 1984), Table 2, p. 7.

Table 3-4

Votes by States on Part Two
FSM Plebiscite, June 21, 1983

Alternative Status Preferred	Kosrae	Ponape	Truk	Yap	FSM Totals	Percent
Independence	401	4,767	7,252	1,504	13,924	72.4
Commonwealth	211	821	96	191	1,319	6.9
U.S. territory	124	424	92	180	820	4.3
Statehood	173	278	38	79	568	2.9
Other, no description	285	481	1,429	392	2,587	13.5
Totals	1,194	6,771	8,907	2,346	19,218	100.0

Source: The figures in Table 3-2.

Chapter 4

The Plebiscite in the Marshall Islands

The last of the Micronesian plebiscites of 1983 was held in the Republic of the Marshall Islands (Repmar) on September 7th. As we shall see, the Compact was publicly disputed in the Marshalls at least as hotly as in Palau and a good deal more so than in the FSM. Moreover, in several respects the United States had a more obvious and important stake in the outcome in Repmar than in the other two jurisdictions.

For one thing, in Palau the U.S. had only contingency plans for the possible use of Palauan territory for future military facilities, but in the Marshall Islands it had already invested billions of dollars in constructing and operating the Kwajalein Missile Range (KMR). The Department of Defense was therefore gravely concerned with any political development that might skyrocket the rental charges or perhaps even force the relocation of the facility to some other site.

For another thing, in the late 1940s and early 1950s the United States had tested a number of nuclear devices in some northern parts of the Marshall Islands, particularly on Bikini and Enewetak. In the course of these tests the residents of Bikini and Enewetak were relocated to other parts of the Marshalls, and residents of other islands in the vicinity, especially Rongelap and Utirik, were exposed to radioactive fallout from the nuclear detonations. (Some residents of other northern atolls, such as Ailuk, Lae, Likiep, Mejit, Wotho, and Wotje, felt that they too had been damaged by fallout, but to date the evidence is inconclusive.) The U.S. had already made compensation payments to Marshallese adversely affected by the tests, but a number of private suits had been brought by Marshallese plaintiffs against the U.S. government in U.S. courts claiming further payments. These suits were being litigated, on a contingency fee basis, by a number of Honolulu- and mainland-based lawyers representing the Marshallese claimants. They joined together in an organization called the Marshall Islands Atomic Testing Litigation Project (MIATLP), and their claims totalled more than $4 billion. So it was obviously in the interest of the United States to settle these claims permanently and for a reasonable figure.

These circumstances, as well as their continuing interest in the problems of conducting plebiscites in Micronesian conditions, made the plebiscite in the Marshall Islands especially interesting for AEI's scholars, who made three trips to the area. The first was made by Austin Ranney and Raymond Wolfinger from November 12 to 21, 1982. They arrived in Majuro on November 14, went from Majuro to Kwajalein on November 18, and returned from Majuro to the mainland on November 19-21. The primary purpose of this initial visit was to observe and discuss the voter education program. During their stay on Majuro, Ranney and Wolfinger held discussions with a number of Marshallese election officials and leaders of both the pro-Compact and anti-Compact sides. Their most extensive discussions were held with Carmen Bigler, the director of the Political Education Commission; Shiro E. Riklon, Repmar's chief electoral officer; Dan Smith, editor and publisher of the Marshall Islands Journal; Kinja Andrike, head of the department of education; Gerald Knight, curator of the Alele Museum; George Allen, a leading attorney for the Kwajalein Atoll Corporation (KAC); Hermios Kibin, chief electoral officer for Kwajalein atoll; Father Hacker, head of the Roman Catholic Mission on the island of Ebeye in Kwajalein atoll; Carl Ingram, attorney-general of Repmar; Colonel John Beavers, head of public relations for the KMR; Oscar de Brum, chief secretary (head of the civil service) for Repmar; and Amata Kabua, president of Repmar.

The second visit was made by Richard Smolka from August 8 to 14, 1983. This special visit was precipitated by the July 18 resignation of two anti-Compact members of the Political Education Commission, Jack Jorbon and Laninruj Abon. During his visit Smolka had extended discussions with Jorbon about his reasons for resigning. He also had discussions with Senator Litokwa Tomeing from Wotje, Carmen Bigler, Shiro Riklon, and Carl Ingram. In addition, he also talked to other members of the voter education task forces, including commission member Amatlein Kabua Heine and task force members Nejan Edwards, Nag Nang, Ina Lomae, Andrew Bilimon, and Gloriana Harris.

The third and most extensive visit was made to observe the conduct of the plebiscite, from September 1 to 11, 1983. Howard Penniman and Richard Smolka went to Majuro, David Butler went first to Kwajalein and then to Majuro, and Austin Ranney and Raymond Wolfinger went first to the East-West Center at the University of Hawaii and then to Kwajalein and Ebeye. Wolfinger also went to Wotho and Rongelap on election day.

The Majuro team had further discussions with many of the election officials and political leaders met on earlier trips, especially Carmen Bigler, Shiro Riklon, Carl Ingram, George Allen, and Senator Henchi Balos of Bikini. They also visited the headquarters of the anti-Compact coalition, and attended a class on the Compact taught by Brother Henry Schwalbenberg.

The Kwajalein team spent much of its time on Ebeye discussing the election arrangements with Hermios Kibin and voter education issues with Kwajalein atoll's main anti-Compact leaders, including Senators Imada Kabua and Ataji Balos, Mayor Alvin Jacklick, and Fountain Inok, president of the Ebeye Chamber of Commerce. They also had discussions with the two main pro-Compact leaders on Ebeye, Damien Ishoda and Sato Maie. On Kwajalein island discussions were held with Andrik Niteak, iroij (traditional chief) of Enniburr Island; Jiba Kabua, Repmar's main liaison officer for Kwajalein; Lynn K. Lanej, chief precinct official for Kwajalein island; and Paul Patrick, head of the union of Marshallese workers for KMR. On election day, Butler, Ranney, and Wolfinger observed the voting on Ebeye and Kwajalein, and Wolfinger also observed the voting on Wotho and Rongelap. Penniman, Smolka, and Butler observed voting on Majuro and were also present during the first two days of the vote counting in Majuro, where the votes from all the voting districts were counted and tallied. On their trips to and from the Marshall Islands, Penniman, Smolka, Ranney, and Wolfinger visited the East-West Center of the University of Hawaii and participated in discussions on Marshallese culture and politics with Micronesia experts Norman Meller and Leonard Mason.

Much of the analysis that follows is based upon these discussion as well as upon documentary materials collected by the scholars.

Preliminaries to the Plebiscite

1. Negotiation of the Compact. The negotiations between the Marshall Islands and the United States over the content of the Compact and the related agreements encountered many dificulties, especially in connection with the vexing issues of compensation for the Kwajalein

landowners and settling the claims of Marshallese injured by the nuclear testing. As a result, they were even more protracted and difficult than those with Palau and far more difficult than those with the FSM. The breakthrough in the Marshallese-U.S. negotiations finally came in late June 1983, when both sides agreed upon a new formula for U.S. payments to the Repmar government for settling the nuclear-damage claims. Originally the U.S. had proposed that it would pay approximately $150 million over a fifteen-year period. Repmar said that the amount was too small, but the U.S. refused to increase it. Then a new proposal was made that the U.S. pay the entire $150 million at the beginning of free association, so that the money could be invested and produce returns expected to be about $18 million a year. At the end of the fifteen years the principal and interest from investment would add up to an estimated total payment of $270 million, considerably more than the original proposal, without requiring any additional appropriations by the U.S. Both sides agreed to settle the claims in this way, and on June 25, 1983 President Amata Kabua signed the Compact for Repmar and Ambassador Fred Zeder signed it for the United States. Soon thereafter the plebiscite date was set for September 7 by the Nitijela (the Marshallese parliament).

2. Timing of the Plebiscite. As in Palau and the FSM, some opponents of the Compact argued that the September 7 date was too early. The Compact, they said, is nearly 300 pages long and packed with obscure legal language; the voters need much more than the two-and-a-half months allotted to study and understand it. The pro-Compact leaders replied that the main issues in the Compact had been discussed for at least thirteen years and were well understood by most Marshallese.

Furthermore, the political education program and the campaigning by the organizations supporting and opposing the Compact, along with the extensive news coverage in the Marshall Islands Journal and the government radio station, would provide extensive additional detailed information. Hence there was no need to postpone the election.

AEI's scholars agreed with the conclusion of the United Nations observers that:

> "Although some people informed us that they did not understand the compact, we believe that, very largely as a result of the programme of political education, in general the people of the Marshall Islands were able to cast their votes on 7 September 1983 with a knowledge of the major issues involved and with at least some idea of the possible alternative constitutional options."[1]

And there is no reason to suppose that postponing the vote another two or three months would have significantly increased popular understanding.

3. Wording of the Ballot. In preparing the wording of the ballot, the U.S. and Repmar negotiators had the Palauan and FSM ballots and experience as models, good and bad, and there was little controversy about the propositions should be worded. The ballot was printed in both English and Marshallese, and read as follows:

PART ONE

TO VOTE ON THE QUESTION OF FREE ASSOCITION WITH THE UNITED STATES, PUT AN "X" OR OTHER MARK IN ONE OF THE TWO BOXES.

DO YOU APPROVE OF THE COMPACT OF FREE ASSOCIATION AND ITS RELATED AGREEMENTS?

☐ YES/AET

☐ NO/JAB

PART TWO

THE VOTER IS ALSO REQUESTED TO VOTE ON THE QUESTION IN THIS PART. TO VOTE ON THE QUESTION IN THIS PART, PUT AN "X" OR OTHER MARK IN ONE OF THE TWO BOXES.

☐ INDEPENDENCE

☐ A RELATIONSHIP WITH THE UNITED STATES OTHER THAN FREE ASSOCIATION

YOU MAY DESCRIBE
THAT STATUS:

....

....

....

Any ballot marked by a voter for either of these propositions was regarded as valid and was counted. As in Palau and the FSM, the answers to the first question were binding, and the answers to the second question were advisory. The Marshallese ballot followed its two predecessors by specifying "independence" as one of the options in Part Two. The other alternatives were not specified because it was felt that such a list might arbitrarily structure the voters' preferences, and the advisory nature of Part Two made it less important to list specific options. The options that in fact received the most discussion and were most often marked on the ballot (see below) were "commonwealth," "sticker," "statehood," and "status quo." The "sticker" option was unique to the Marshall Islands plebiscite and merits some further explanation.

4. The "Sticker" Option. As we will note in greater detail below, one of the strongest elements in the coalition opposing the Compact consisted of people (and their attorneys) who were making claims, or intended to make claims, against the United States for personal injuries and property damages incurred as a result of the testing of nuclear weapons by the U.S. in the late 1940s and early 1950s (see above).

Section 177 of the Compact and its related agreement proposed to handle these suits and any future suits by having the U.S. pay to Repmar a sum of money that would cumulate to $270 million over fifteen years (see above). Repmar would decide how much in damages would be paid to particular individuals, the suits before the courts would be dropped, and no future suits would be brought. The "nuclear victims" element of the anti-Compact coalition, as organized by the Marshall Islands Atomic Testing Litigation Project (MIATLP -- see below), was strongly opposed to this provision, and felt it was important enough to warrant defeating the whole Compact.

A typical anti-Compact newspaper advertisement published prior to the election said:

> "We believe that for whatever reason you might vote yes you still might not believe that a 177 Agreement which provides so little money for all of the radiation victims AND for the clean up on Bikini is fair. . . .There is a place on the ballot for you to write in or put in what you think. No matter whether you vote yes or vote no you should use this opportunity to tell the United States Congress how you personally feel. We have provided stickers to place on the ballot, a copy of which appears with this article. Please peel off the back and stick it on the bottom of the ballot: NO to 177 or JAB 177. . . .No matter how you vote, yes or no [on Part One], please use this method to Vote Jab on 177."[2]

The exact language of the sticker was:

> "A Compact of Free Association should NOT include a 177 Agreement. Radiation victims should be FREE to settle PRIVATELY or go to Court."

How this novel method of voting worked out on election day we shall describe later.

The Voter Education Program

The voter education program in the Marshall Islands was funded by the United States and administered by a five-member Commission of Public Education on the Draft Compact of Free Association. The Commission's members were appointed by the Repmar cabinet in November 1982. The chairperson was Carmen Bigler, Secretary of the Department of Internal Affairs (an appointed, not elected position), and the other commissioners were divided equally between proponents and opponents of the Compact: Amatlein Kabua Heine and Abner Lomae represented the AET (Yes) forces, and Jack Jorbon and Laninruj Abon represented the JAB (No) forces.

The Commission began the program by having the Compact translated into Marshallese, printed in both English (5,000 copies) and Marshallese (15,000 copies). Even with only one indigenous language involved (as opposed to three in Palau and eight in the FSM), the task was not without its technical difficulties: a Marshallese involved in the translation told us that at one point the provision in English that the U.S. would give "sympathetic consideration" to future Repmar requests for funding was translated into Marshallese as giving "sorrowful amazement" to the requests. Arguably, the spirit of the translation was more accurate than the letter, but it was changed. When the translation was complete, the Commission appointed twenty-four persons to the Voter Education Task Force, brought them to Majuro for a two-week training session on the meaning of each section of the Compact, and prepared them to go to all of Repmar's populated places to distribute copies of the Compact and answer questions about its contents.

In February of 1983 the Commission ran out of funds, the negotiations over the nuclear claims provisions of the Compact were deadlocked, and it was not clear when the plebiscite would be held. Consequently, the voter education program was suspended for several months. It was reactivated in late June immediately after the terms of the Compact were finally agreed upon and the date for the plebiscite was set.

In mid-July the two opposition members of the Commission, Jack Jorbon and Laninruj Abon, resigned. They charged that they had not been consulted on the appointment of the members of the task force, that an American clergyman (Brother Henry Schwalbenberg, S.J.) should not be participating in the voter education program, and that Chairperson Bigler had taken many actions without their knowledge or consent.[3]

Richard Smolka made a special trip to Majuro on August 8 to 14 to inquire into the matter. He discussed the situation at length with Jack Jorbon and Carmen Bigler. Jorbon said that his major complaint was that the voter education program did not even try to explain the advantages and disadvantages of the various alternatives to the Compact, but talked only about the contents of the Compact. He felt that the commonwealth alternative, among others, should be fully explained to and discussed with the voters. He did not question the accuracy of any of the Commission's or the task force's written or oral explanations of any provision of the Compact.

Carmen Bigler replied that not only had all the members of the Commission been informed of all of the Commission's decisions but had participated in making them, and she specifically included in this the naming of the task force members and the invitation to Brother Henry to participate in the program. She added that from the beginning of the program everyone had understood that its proper function was to make sure that the voters understood the provisions of the Compact, since that is what they would be voting on. That by itself was a very demanding task, she said, and there was neither the time nor the resources to give full attention to the Compact and to each of its possible alternatives.

After these interviews and a review of what the task force was doing, Smolka concluded that the voter education program was not being used to propagandize for Yes votes, that the opposition had a full and fair opportunity to put their views before the voters, and that they were making full use of their opportunities in radio broadcasts, newspaper advertisements, and rallies in the main population centers.

The Commission reported just prior to the election that it had conducted a total of 129 community meetings with a total known attendance of 4,495, which represented about 35 percent of the estimated number of voters eligible to vote in the plebiscite. Teams were sent to nearly every populated place in the Marshall Islands, and also met with Marshallese students in Hawaii and in four cities on the mainland.[4]

The Commission's efforts were supplemented by a series of radio talks made by Oscar de Brum, the Chief Secretary, and by Brother Henry Schwalbenberg, in which they explained the Compact section by section. As we have seen, Brother Henry, an American Jesuit with graduate training in economics and political science at Columbia University, had conducted analyses, courses, and seminars on the Compact in Palau and the FSM (see Chapters 2 and 3). In the Marshall Islands he assisted the Commission in preparing its explanation of the Compact, taught an evening course open to anyone who wished to attend, and thus played a major role in the voter education program. As he had in the other jurisdictions, he regarded his proper role as one of objectively setting forth the meaning and consequences of the Compact by comparison with the other alternatives, which he identified as independence, commonwealth, territory, statehood, and continuing trusteeship with further negotiations. As we have noted, some anti-Compact forces declared that it was not proper for an American -- and a clergyman at that -- to take part in the voter education program. However, AEI's scholars, like most outside observers, felt that Brother Henry's presentations were accurate and fair accounts of the facts and probabilities, that they were not briefs for either side, and that they played a valuable role in the voter education program.

The program's activities intensified in the final two weeks before the vote. Daily radio broadcasts discussed various sections of the Compact. Liberal radio time was given to anyone, pro or con, who wished to speak. For observers on the spot it was difficult to travel very far without observing people listening to the radio discussions of the Compact, so it appears that they were widely heard by an attentive audience.

In addition, the Marshall Islands Journal for at least forty days prior to the vote announced on its masthead the number of days remaining before the plebiscite: "Journal Countdown, 40 days Until the Plebiscite." The newspaper devoted extensive coverage to the campaign, printed short explanations of the various provisions, and published many statements by the leaders of both sides. It also carried a large number of full-page advertisements against the Compact purchased by the "Vote Jab" forces. AEI's scholars concluded that the voter education program made a major effort to acquaint the Marshallese people with the Compact's provisions, that the Marshallese had an unusually good opportunity to become informed about the issues, and that many of them did so. Indeed, rarely do public issues in the initiative and referendum elections held by many of the states of the United States command such extensive coverage and attention.

The Campaign

1. The Anti-Compact Coalition. In the Marshall Islands the opposition to the Compact was, as in Palau but not in the FSM, well organized, highly visible, and very active. It was conducted by a coalition of three elements, each with a somewhat different motive for trying to defeat the Compact.

The first element was the MIATLP organization, which was concerned almost exclusively with blocking the Compact's provisions in Section 177 to settle all nuclear claims with money to be distributed by the Repmar government and to require that all suits by individuals against the U.S. in U.S. courts be dropped. Richard Gerry, an American lawyer representing MIATLP, took the lead in preparing and financing many full-page advertisements in the Marshall Islands Journal attacking the Compact, He also appeared on radio, on television, and at public meetings attacking Section 177. Part of his time was spent in explaining, rather defensively, that the 25 percent contingency fee basis on which he and his associates were representing their Marshallese clients was a common and entirely respectable financial arrangement in U.S. legal practice. Indeed, he said, 33 percent is the usual basis but had been lowered in these cases because they were suing the U.S. government. His emphasis on this subject and his frequent appearances may have made his role more prominent in the Jab campaign than its Marshallese leaders would have preferred: one of the most-displayed pro-Compact banners read: "DROWN ALL LAWYERS (MIATLP) AND VOTE FOR THE COMPACT!"

The second element of the anti-Compact coalition was the Kwajalein Atoll Corporation (KAC), a group of Kwajalein landowners, led by Senators Imada Kabua and Ataji Balos from Kwajalein atoll, Kwajalein Mayor Alvin Jacklick, and Fountain Inok, president of the Kwajalein Chamber of Commerce. For several years prior to the plebiscite these leaders and the landowners they represented had grown increasingly dissatisfied with the rents which the U.S. was paying for the use of their land for the missile range facilities and increasingly resentful of the KMR's security arrangements which, in their view, made it unnecessarily difficult for the landowners to visit their own lands. They also protested the crowded and unsanitary living conditions on the island of Ebeye, where the Marshallese workers employed by KMR on Kwajalein had to live. From June to October 1982 these leaders had organized a "sail-in" protest, in which a number of Marshallese established camps at Kwajalein and Roi-Namur islands and also stationed their boats in Kwajalein lagoon so as to prevent the U.S. from launching the missiles it was testing. President Amata Kabua and the other leaders of the Repmar government had opposed the protest, and the protesters finally withdrew. There were no serious incidents of violence, but even so the episode left a residue of bitter feelings not only between the protesters and the U.S. but also between the protesters and the leaders of the Majuro government. A small group of Kwajalein landowners opposed the KAC and supported the Majuro government and the Compact. They formed a counter-organization called the Kwajalein Independent Landowners, nicknamed "Ten-Ten" after the quick-service store for KMR workers on Kwajalein island -- suggesting that they were lackies of the Americans running KMR. However, they could muster only a handful of votes, and KAC spoke for a large majority of Kwajalein's voters.

The third element of the opposition coalition was a quasi-political party called "The Voice of the Marshalls." It consisted of a group of leaders, mainly from the southern atolls of Ebon, Jaluit, Mili, and Lib, who had unsuccessfully opposed the adoption of the new Marshallese constitution in 1979. Their leaders included Senators Litokwa Tomeing from Wotje, Chuji Chutaro from Mili, Carl Heine from Jaluit, Henchi Balos from Kili, Ekpap Silk from Ebon, and Evelyn Kanou from Jaluit. Since the early 1970s this group has been the main opposition to the Kabua regime in Majuro, and they have a long history of seeking strong political and economic ties with the United States. In the plebiscite campaign they took the position that the Compact provided for too great a degree of separation of the Marshall Islands from the U.S. and put too much power in Repmar's hands. As longstanding opponents of President Amata Kabua and his Allin Kein Ad party, they believed that Repmar's new and increased powers under the Compact would not be used fairly for the benefit of all the Marshallese islands and people, and they preferred commonwealth status. As Brother Henry Schwalbenberg sums up their position:

> "Many opposition party members [believed] that strong political links with the United States would act as a brake on the power of President Kabua and the iroij. A commonwealth status under U.S. laws would not recognize the [traditional] Marshallese class distinctions, thus giving more clout to educated commoners. Furthermore, it would bring in more money, and this administered not by the elected

government of the Marshall Islands but rather by Washington."[5]

This three-element coalition mounted a substantial campaign against the Compact. Supported mainly by the financial backing of MIATLP and KAC, they took out many full-page advertisements in the Marshall Islands Journal, spoke frequently on the government radio station, posted anti-Compact posters in all areas of opposition strength, distributed baseball bats, T-shirts, and other campaign paraphernalia, and organized parades and rallies, the largest being held on Ebeye just before the election.

The opposition campaign themes were somewhat diluted in the final days, however, when an effort was made to persuade all voters, regardless of whether they intended to vote for or against the Compact on Part One, to place the sticker (see above) on Part Two of the ballot so as to send the strongest possible signal to the U.S. and Repmar governments that the provisions of Section 177 were not acceptable and that the rights of Marshallese citizens to sue the government of the U.S. in U.S. courts should not be given up.

2. The Campaign for the Compact. In at least one major respect the campaign in the Marshall Islands differed sharply from the campaigns in Palau and the FSM. We noted in earlier chapters that no substantial explicit pro-Compact campaigns were mounted in either country. That was not the case in the Marshall Islands. The pro-Compact forces, led by President Amata Kabua and his Allin Kein Ad party, decided that the opposition forces were very strong and that the Compact might well lose unless a vigorous campaign were mounted on its behalf. So Oscar de Brum, the head of Repmar's civil service, led a government team to the southern atolls to win support for the Compact. Charles Domnick, a

cabinet minister from Maloelap, led a team to the northern atolls. And, most important of all, President Amata Kabua made a month-long trip to eighteen atolls, including Enewetak, Kwajalein, Jabat, and Ailinglaplap. using his prowess on the electric organ and his oratorical skills to attract audiences and persuade them to vote for the Compact. The pro-Compact campaign climaxed in Majuro on the day before the election. A parade, consisting of private vehicles and public trucks decorated with VOTE AET signs took more than a half-hour to pass. An outdoor barbecue followed, drawing hundreds of people, some of whom remained until long after sunset. Posters supporting the Compact emphasized the financial benefits the Compact would bring and also hailed the chance to end centuries of rule by foreigners. One sign read: "We are not American Indians, we are Marshallese. This is the 20th Century and we know better. VOTE AET!"

For both the Aet and Jab sides, however, there was a private and personal campaign as well as a public campaign. Each devoted a great deal of time and effort to trying to presuade the most influential local chiefs (the iroij) of the rightness of their side so that the chiefs would, in turn, convince their followers to vote the right way. Leaders on both sides told AEI's scholars that, aside from some people in Majuro, most Marshallese would not be much influenced by the general propaganda of either side coming over the radio or in the newspaper advertisements. Most ordinary voters, they said, would be mainly influenced by what their traditional chiefs advised; hence persuading those chiefs was the prime, though not the only, objective of the campaigns of both sides. We shall note some manifestations of chiefly influence in our analysis of the plebiscite results.

3. The Main Issues in the Campaign. The issues that received the most attention and discussion during the campaign were the following:

(1) Is Section 177 and its related agreement an acceptable way to settle the nuclear victims' claims? To understand this issue, let us first be clear about the main provisions of the controversial Section 177 agreement as negotiated by Repmar and the United States:

> (a) The agreement will settle all claims by the Marshallese people against the United States for injuries and damages resulting from the U.S. nuclear testing program.
>
> (b) On the day the Compact becomes effective, the United States will pay to Repmar the sum of $150,000,000. This sum will be invested in a perpetual fund that will yield approximately $18,000,000 per year for each of the fifteen years of the agreement.
>
> (c) From these earnings, during the first fifteen years of the Compact the people of the affected atolls will receive a guaranteed total of $183,750,000 in quarterly payments allocated as follows:
>
> To the people of Bikini: $75,000,000
> To the people of Enewetak: $48,750,000
> To the people of Rongelap: $37,500,000
> To the people of Utirik: $22,500,000
>
> (d) Also during the first fifteen years of the Compact, a total of $45,750,000 will be set aside for payment of uncompensated claims from those atolls or any other atoll or island group in the Marshalls. A claims tribunal established by Repmar but independent of its executive and legislative officers will adjudicate all such uncompensated claims.
>
> (e) Espousal: this agreement constitutes the full settlement of all claims, past, present, and future, of the citizens and government of all the Marshall Islands against the United States which are based on the nuclear testing program. Repmar will terminate any and all legal proceedings in the courts of the Marshall Islands against the United States involving claims arising out of the nuclear testing program. No United States court will have jurisdiction to entertain such claims, and any such claim no pending in the U.S. courts will be dismissed.

Those were the main provisions of Section 177. The pro-Compact forces argued that the settlement was fair, that it was the best deal the U.S. was likely to make, and that a good settlement firmly in hand was far better than holding out for a higher but illusory settlement sometime in the future. Moreover, some preliminary decisions on the MIATLP suits in the U.S. courts had already indicated that most of the suits pending in 1983 and likely to be filed in the future would not be successful. Accordingly, they argued, Section 177 was a good deal and much better than any other the Marshallese people were likely to get.

The anti-Compact forces made two main arguments. First, the prospects for winning the nuclear-claims suits in the U.S. courts were much better than the Kabua forces alleged, and pursuing the individual-claims strategy was likely to bring much more money to the victims than they would get from the Section 177 settlement. (After all, they noted, the total damages being asked in the suits then pending came to over $4 billion.) Second, Section 177 violates the rights of individual Marshallese by taking away their right to sue for damages in the courts and forcing them to accept amounts decided by their local government council and the Repmar claims tribunal. In short: the nuclear claims litigants (and their attorneys) would get more money, and it would be more fairly distributed, under the status quo than under the provisions of Section 177.

(2) Are the provisions for the Kwajalein Missile Range land acceptable? The Kwajalein Missile Range is by far the largest U.S. military installation in the entire Trust Territory. It is important to the U.S. weapons testing program, and it is also a major source of revenue for the Marshallese. Under agreements made prior to the Compact, the U.S. makes annual payments of $7 million, plus other

benefits, for the use of the land, and most of the money is distributed to the landowners according to Marshallese customary rules. KMR also employs about 500 Marshallese workers at U.S. wage scales (which are substantially higher than rates of pay elsewhere in the Marshalls), and the Majuro government collects a 3 percent income tax on the American incomes earned at KMR. Brother Henry Schwalbenberg estimates that "roughly 30 percent of the Marshallese gross domestic product is derived from Kwajalein Missile Range in the form of land payments, taxes, and employment."

The Compact and related agreements propose to increase the annual payments for KMR from $7 million to $9 million, but they also have two provisions that are unacceptable to the KAC. First, the terms for the use of KMR will not be renegotiated for thirty years -- whereas at present the KMR agreement is renegotiated every two or three years. Second, the Compact will convert what is now a series of short-term agreements between the U.S. and the Kwajalein landowners into a long-term agreement between the U.S. and the Majuro government, which makes some members of the KAC fear that some of the money will be siphoned off by Repmar to finance projects elsewhere in the Marshalls. As Brother Henry comments, "it seems that trust is not taken for granted too often in the Marshall Islands."[6]

The pro-Compact forces argued that the proposed rental money and duration of the KMR agreement are fair, adequate, and the best deal the U.S. is likely to make. Moreover, they said, the many benefits of the Compact for all the Marshallese people should not be denied or postponed because a few Kwajalein landowners think they can get more money.

The anti-Compact forces argued that the United States has already invested billions of dollars in the KMR facilities and is in no position to abandon them rather than pay more rent; hence the landowners are in a better bargaining position than the U.S., and Repmar should take much better advantage of that fact than the Compact allows. Moreover, the "Jab" forces argued, the land rights of the people of Kwajalein are their most precious possessions, lying at the heart of the values held most dear by all Marshallese. To abridge their rights because uninvolved people in Majuro and the other islands are willing to sell them out for the Compact's alleged benefits is unjust and unacceptable.

(3) What future status is best for the Marshall Islands? The pro-Compact side argued that free association is clearly better than any of the realistic alternatives. It is better than continuing the trusteeship because it ends the semi-colonial status the Marshallese people have known for too long. It is better than independence because the Marshall Islands are not capable of surviving economically by themselves, and they will need massive U.S. economic aid and military protection into the indefinite future. It is better than commonwealth because it gives the Marshallese control of almost all of their own affairs, far more than the people of the Northern Marianas have. Moreover, the Compact removes any possibility (which would be ever-present in commonwealth status) that the U.S. might use its power of eminent domain to claim ownership of Marshallese lands. It is better than being a territory of the U.S. because it makes the Marshall Islands sovereign over their own affairs, especially in matters concerning the ownership of land. Finally, it is better than statehood for the same

reasons, and in any case statehood is not likely to be granted by the U.S. Congress.

For reasons given above, the "Voice of the Marshalls" opposition in the southern atolls opposed the very principle of free association, and preferred commonwealth or some other closer relationship with the U.S. Few people in the other two opposition groups opposed the principle of free association in favor of some other principle, such as independence or commonwealth or statehood. Almost all of them favored free association on better terms. As we noted above, they especially favored the elimination or radical revision of Section 177 and a drastic revision of the terms affecting the KMR lands. Hence they favored rejecting this particular Compact and then negotiating a new and better compact that they could support.

In short, for most Marshallese on both sides of the question the choice was between this Compact on these terms now or continuing the trusteeship for awhile longer in the hope and belief that a better deal could be struck with the U.S. and a better compact of free association could be approved in the future.

Election Experience and Rules

1. Previous Election Experience. Like Palau and the FSM, the Marshall Islands had already held a number of elections prior to 1983. There were major referendums in 1974, 1977, 1978, and 1979, and the latter two were observed and their conducted praised by observers sent by the United Nations Trusteeship Council. In addition, there were elections for members of the Congress of Micronesia every two years from 1964 through 1976, elections for members of constitutional conventions in 1974 and 1979, and elections for members of the Nitijela in 1979

(another Nitijela election was held in November 1983 after the plebiscite on the Compact). So the Marshallese people had had plenty of experience with both candidate and referendum elections prior to September 1983, and Repmar had assembled a body of officials with considerable expertise in administering all aspects of elections, including registration, absentee voting, and the casting, counting, and tallying of votes.

2. The Rules. The 1983 plebsicite was conducted under rules laid down by the Nitijela and administered by the chief electoral officer, Shiro E. Riklon.

A citizen of the Marshall Islands was qualified to vote if he or she was eighteen years of age or older on the day of the plebiscite, had fulfilled the requirements for registration, and was not under a judgment of mental incompetency or insanity or under parole, probation, or sentence for a felony.

Most eligible Marshallese were already listed on the voter registration rolls from previous elections, but to encourage maximum participation by unregistered but otherwise eligible citizens registration at the polls on election day was also permitted. In addition, all citizens were given the option of being registered at either their places of residence or the places where they have land rights -- though not, of course, at both places.

The Nitijela also passed a new and less demanding absentee voting law. It retained absentee voting by mail and added a new system of "on-island" absentee voting, which allowed citizens to vote in person, not by mail, at districts in the Marshalls other than those in which they were registered. It also allowed "off-island" absentee voting, which auhorized the chief electioral officer to appoint special election board members empowered to notarize registration and absentee voting affidavits in locations outside the Marshalls, such as Saipan, Guam, Ponape, Palau, Honolulu, and Huntington Beach, California.

The deadline for registration outside the Marshall Islands was August 24, 1983, and absentee ballots could be requested until August 28. Within the Marshall Islands, absentee ballots could be requested until September 2, five days before the election. The deadline for receipt of absentee ballots was election day, whether delivered by mail or by hand to a member of the board of elections or deposited in a ballot container.

The chief electoral officer was responsible for the printing of the ballots and for delivering an adequate number of ballots, in sealed packages, to the members of the election boards, whom he had appointed for each polling station.

On election day, eighty-five polling stations were open throughout the Marshall Islands. At each station, when persons wishing to vote appeared their names were checked on the registration rolls and, if they were on the rolls and had not voted earlier, they were given ballots. In addition to the standard polling places equipped with plywood voting booths, three "mobile polls" were established to conduct voting in the rural areas of Majuro. One team of election officials traveled in an automobile and two teams used trucks, with a policeman accompanying each vehicle. Using the list of registered voters, the poll officials moved from house to house processing voters and having them mark their ballots and deposit them in regular ballot boxes. The three mobile polls covered about twenty miles of Majuro's thirty-six mile length. Poll watchers (a total of 30 representing the government and 80 representing the anti-Compact coalition) as well as press and official observers were present at many of the polling stations and mobile polls.

Most of the election-day registrants voted on Majuro and Ebeye. These voters used a double-envelope procedure and cast their ballots in the same manner provided for those whose right to vote was challenged. In this procedure, the voter marked and placed his ballot in an envelope that was put inside a second envelope, which contained the voter's name, address, and voting district. If there was no challenge to that voter's right to vote, and no evidence that the voter had voted at another location, then the envelope with the ballot was separated from the affidavit and placed with others to be counted at a later time.

The polls were scheduled to open at 7:00 a.m., and did so in Majuro and most other locations. However, when the AEI and UN observers arrived at the polling place on Ebeye at 6:45 a.m. they found no voting booths set up and no election officials in sight. Some said that the the person in charge had overslept and would be there shortly. Eventually the officials arrived, the plywood voting booths were hastily assembled, and voting finally began at 8:00 a.m.

In both Ebeye and Majuro the election authorities underestimated the number of election-day registrations and the number of in-person absentee voters, and as a result the voting lines began to build early and grew longer and longer as the day wore on. The polls were scheduled to close at 7:00 p.m., but when that time arrived several hundred people were still standing in line at the places designated for absentee voting and for election-day registration. Consequently, the chief electoral officer decided to keep the polls open at both places until every voter standing in line at 7:00 p.m. had a chance to vote. (Policemen were stationed at the end of the lines to make sure that no one joined them after 7:00 p..m.) The polls finally closed around midnight in Majuro and around 1:30 a.m. in Ebeye.

All the ballot boxes from the eighty-five polling stations throughout the islands were brought, some by airplane and some by boat, to the Nitijela building in Majuro for counting; there was no counting of any kind elsewhere. Because of the distances involved, the boxes were not all assembled in Majuro until September 10, three days after the voting. Nevertheless, the count began with a prayer shortly after 10:00 a.m. on September 8. Two ballot counting teams processed and tallied the ballots in full view of all observers, including representatives of both the pro- and anti-Compact sides, United Nations observers, AEI scholars, and journalists. The count began with the Majuro boxes. The counting teams first unfolded and counted the number of ballots, checking the totals against the number reported. Absentee voters as well as election-day registrants were checked against the voter registration rolls and records to ensure that none voted twice. Then they began a standard "call-and-tally" procedure, whereby each ballot was scrutinized by two counters, the votes on the questions were called to the talliers, and the talliers made the appropriate marks on the tally sheets. The boxes from Majuro and Ebeye, which had by far the largest number of absentee and election-day registrants, took by far the longest to process.

The stickers pasted on Part Two of some ballots (see above) initially posed some problems for the counters, who had not seen anything like them in previous elections. Not unreasonably, it was decided to count and tally them simply as "stickers" rather than to try to classify them as some alternative form of association with the United States under Part Two comparable to the independence or commonwealth alternatives. All blank ballots on Part Two were also duly recorded and tallied.

It was a careful, demanding, and slow procedure. The count continued all day Thursday, Friday, and Saturday, and was not completed until over a week after the voting.

AEI's scholars concluded that, while the administration of the plebiscite sometimes fell short of perfect efficiency -- witness, for example, the long lines and late poll closings in Majuro and Ebeye -- there was no evidence of fraud, and the election was as "clean" as most conducted in the United States and other Western democracies. Moreover, both the election rules and their administration were designed to make it for all eligible persons to vote. Like the UN observers, AEI's scholars were greatly impressed by the good humor, orderliness, and devotion to democratic values of the many voters in Majuro and Ebeye who stood in lines, many of them for hours, in the region's hot sun and high humidity -- and then, for many, darkness -- in order to cast their votes. We have no doubt that the plebiscite's results represented a fair reflection of the preferences of the Marshallese people.

The Plebiscite Results

The plebiscite results, listed by voting districts, are shown in Table 4-1.

(Table 4-1 about here)

1. Turnout. At the time of the plebiscite there were approximately 13,000 registered voters in the Marshall Islands. A total

of 10,724 persons cast valid ballots, and an additional 127 persons went to the polls but had their ballots rejected for improper marking. Thus the turnout in the 1983 plebiscite was 83.5 percent. By mainland U.S. standards it was a remarkably high turnout, and it was considerably higher than both the 49.3 percent who voted in the 1979 referendum on the proposed constitution for the Marshall Islands and the 59.5 percent who voted in the 1978 referendum on the proposed Micronesia-wide constitution.

2. Analysis of the Results: Part One. Perhaps the first characteristic of the vote on Part One of the ballot ("Do you approve of the Compact of Free Association and its related agreements?") were the heavy majorities for one side or the other in almost every district, as is shown by the data in Table 4-2:

(Table 4-2 about here)

The figures in Table 4-2 show that in only six of the twenty-four voting districts did the size of the majority for one side or the other fall below 70 percent, and the average district majority for the sixteen "Yes" districts was 75.4 percent, while the average majority for the eight "No" districts was 70.3 percent. Hence the overall "Yes" majority of 57.9 percent was not the result of similar and evenly-divided preferences throughout the islands; rather it resulted from the fact that there were more strongly "Yes" districts than there were strongly "No" districts.

Most observers felt that these lopside majorities for both sides reflected a basic feature of voting in Micronesia which we have noted several times in the preceding chapters: when the traditional chief or chiefs (in the case of the Marshall Islands the iroij and iroij laplaps) have indicated their preferences on an issue, most of their followers vote accordingly -- not out of fear of reprisal but simply because they trust their chiefs to guide them in such matters.

When the returns are analyzed district-by-district, the components of support and rejection for the Compact stand out.[7] We noted earlier that the anti-Compact coalition had three main elements. One was the Kwajalein landowners and their attorneys, and Kwajalein, with a heavy turnout, voted 70.4 percent No and provided over one-fifth of all the No votes.

The second element was the "nuclear victims" group in the northern atolls spearheaded by MIATLP. The four "radiation" atolls mentioned by name in the Compact were all generally expected to vote heavily against it, but, to the surprise of many observers, they split: Kili-Bikini voted 78.8 percent No and Rongelap voted 85.6 percent No (the largest No majority in any district). But Enewetak-Ulejang voted 74.6 percent Yes and Utirik voted 72.1 percent Yes. Added together, the four atolls produced a No majority of only 52.5 percent -- an outcome that was both unexpected and extremely disappointing for the MIATLP forces. The other northern atolls with potential nuclear-damage claimants were also expected to produce large No votes, but they too dashed MIATLP's hopes: six of the seven (Ailuk, Lae, Likiep, Mejit, and Wotho) produced strong Yes majorities, and only Wotje voted No.

The third element of the anti-Compact coalition was the "Voice of the Marshalls" group centered mainly in the southern atolls of Jaluit, Mili, Ebon, and Lib. All four voted strongly against the Compact, with No majorities ranging from 78.1 percent in Ebon to 56.5 percent in Lib. Together they provided the largest single block of No votes -- 29 percent of the overall total compared to Kwajalein's 22 percent. These four atolls also produced the only substantial support for the "closer ties to the U.S." option in Part Two of the ballot: together they contributed 355 of the overall total of 404 votes for closer ties, and a majority of 55.6 percent compared with 30.7 percent among all voters.

Elsewhere the outcomes represented a major achievement for the pro-Compact forces -- especially impressive in light of the fact that a month before the plebiscite many knowledgeable observers expected the Compact to lose. On heavily-populated Majuro the forces led by President Kabua increased their majority from the 64.6 percent they had won in the 1979 referendum on the new constitution to 78.1 percent on the Compact. Even in the southern atolls they improved: in 1979 they won an aggregate share of only 23.9 percent, but in 1983 it rose to 30.8 percent. In the other districts the Kabua forces either held or increased their 1979 majorities. Most observers credited the turnaround in the vote to the vigorous and skillful campaign waged by Secretary Oscar de Brum, Minister Charles Domnick, and, above all, President Amata Kabua in the crucial weeks just before the plebiscite.

3. Analysis of the Results: Part Two. As the figures in Table 4-1 show, fully 70.7 percent of the voters did not vote on Part Two at all. For them the issue clearly was the Compact, up or down; and, having expressed themselves on that question in Part One, they did not care to vote on Part Two, which, after all, was only advisory.

Nevertheless, 29.3 percent of the voters did vote on Part Two, and the distribution of their preferences tells us something about the state of opinion among the voters. The options of independence and commonwealth status each received support from less than 5 percent of the voters. Another 8.7 percent checked the box for "a relationship with the United States other than free association" but did not write any description on the lines provided for that purpose, so we can only speculate about what other relationships they would have wanted if the Compact had failed.

The opposition coalition did persuade a total of 1,317 voters (12.3 percent of the total) to mark the "other relationship" option and then paste the no-Section-177 sticker on the ballot.

Only four groups of voters -- those in Ebon, Jaluit, Rongelap, and the postal absentee voters -- cast more than 50 percent of their votes for the "other relationship" option of Part Two. Of these, Ebon cast 61 percent of its Part Two votes for commonwealth status, and only 22 percent used the "sticker." Jaluit cast 37 percent of its Part Two votes for commonwealth status, 31 percent did not specify an alternative, and 25 percent used the sticker. Only Rongelap voted solidly as MIATLP had urged: of the island's 111 total votes, 86 were marked "other relationship" and of those 84 -- 76 percent of all voters and 98 percent of all Part Two voters -- pasted the sticker on their ballots.

The postal absentees provided the only noteworthy votes for the "independence" option: of the 168 in this group, 98 (58 percent) marked "other relationship" on Part Two, and of those 21 marked "independence" as their preferred alternative -- 12.5 percent of all voters and 21 percent of those who marked Part Two.

The "sticker" option also fared relatively well in Wotje, Kwajalein, Maloelap, and Utirik. But the main message from the voting on Part Two was that the great majority of the Marshallese voters saw the plebiscite as mainly an opportunity to express their views on the Compact.

4. The Impact of Absentee Voting and Election-Day Registration. We noted earlier that in order to make voting on the Compact as easy as possible, the Nitijela made it easier for a voter registered in one district to vote in-person-absentee in another district on election day, and also made it possible for an unregistered but otherwise eligible citizen to register at a polling place on election day. These liberalizing provisions had some noteworthy effects on both the turnout and the outcome, as is shown in Table 4-3:

(Table 4-3 about here)

The figures in Table 4-3 show that only slightly over half of all votes were cast by persons voting in person in their home districts. Nearly a third voted in person in districts other than their home districts, and 14 percent of the votes were cast by persons who registered at the polls on election day.

The figures in Table 4-3 also show that the election-day registrants were somewhat less in favor of the Compact (53.4 percent Yes) than the previously-registered voters (58.7 percent Yes). It seems, then, that both liberalizing measures significantly increased the turnout and that election-day registration helped the No forces somewhat while easier absentee voting helped the Yes forces somewhat. But all four classes of voters returned majorities in favor of the Compact, so the liberalizing measures certainly did not determine the outcome.

Fairness of the Plebiscite

In the opinon of AEI's scholars, the Marshall Islands plebiscite was a fair election, and the result was a meaningful expression of the will of the Marshallese voters. The Compact and the issues it posed were aired intensively on the radio for over two months preceding the election, and most of the issues had been discussed for years before that. Both the pro- and anti-Compact forces had full access to newspapers, radio, and television, and both were able to use both free time and purchased space to communicate their views. Both sides conducted major election-eve rallies peacefully and without provoking violence.

The election rules and their application by the election officials were structured so that every Marshallese citizen, whether in his or her own district, in another district, or overseas, was able to register and vote with minimum difficulty. Although the administration of the casting and counting of votes on election day could have been conducted more efficiently with a larger number of election officials, no one who wanted to vote was denied the opportunity of doing so. The patience of voters in Majuro and Ebeye, some of whom waited without complaint until past midnight to vote, was truly impressive.

The vote count was slow but deliberate and careful. Although the tally proceeded more slowly than was necessary, the outcome of the vote, especially on Part One, was an accurate expression of opinions on that key question. There was some laxity in tallying preferences on Part Two. This was due to some degree to the great emphasis placed on Part One (which, after all, was the action part of the plebiscite), and to some degree to the complications in interpreting, classifying, and tallying the variety of answers on Part Two. Even so, when confronted with the novel use of stickers on the ballots, the chief electoral officer, in consultation with the attorney-general, came to the sensible conclusion that the stickers should be accepted and tallied as expressions of a significant preference even though their common message was apparently irrelevant to the question asked in Part Two.

One of AEI's scholars summed up the plebiscite thus:

> "It was a fair election. The U.N., in deciding whether their last trusteeship. . .can be abandoned, will certainly be told by its observers that the vote was an honest expression of an unglamorous, pragmatic choice. What was going on in the mind of a lady with a suckling baby who was collecting her ballot at midnight [on Majuro] after queueing for six sweaty hours? It seems plain that she really cared about expressing, in all due formality, what she wanted for her country's future."[8]

Footnotes for Chapter 4

1. Report of the United Nations Visiting Mission to Observe the Plebiscite in the Marshall Islands, Trust Territory of the Pacific Islands, September 1983 (United Nations Document T/1865, 1984), p. 5.

2. Marshall Islands Journal, September 2, 1983, p. 7.

3. Marshall Islands Journal, July 22, 1983, p. 1.

4. Marshall Islands Journal, August 30, 1983, p. 1, and September 9, 1983, p. 1.

5. Henry M. Schwalbenberg, S.J., "The Marshallese Plebiscite: No to Commonwealth," Micronesia Seminar Memorandum #13 (April 1984), p. 5.

6. Ibid., pp. 6-7.

7. For a more detailed district-by-district analysis, see ibid., passim.

8. David Butler, The Times (London), September 14, 1983, p. 14.,

Table 4-1

Results of the Marshall Islands Plebiscite
by District, September 7, 1983

	Part One			Part Two					
Electoral District	Yes	No	Percent Yes	Independence	Commonwealth	"Sticker"	Not Specified	Other	Blank
Ailinglaplap	434	208	67.6	29	9	16	38	1	550
Ailuk	237	93	71.8	16	1	56	28	--	230
Arno	581	175	76.9	46	1	26	71	1	611
Aur	219	72	75.3	16	4	25	18	1	227
Ebon	104	370	21.9	15	175	63	32	--	191
Enewetak-Ujelang	185	63	74.6	7	--	5	6	--	230
Jabat	46	11	80.7	2	1	4	3	--	47
Jaluit	268	595	31.0	28	167	115	141	4	411
Kili-Bikini	65	241	21.2	4	--	5	5	--	292
Kwajalein	418	993	29.6	44	1	341	150	1	876
Lae	103	36	74.1	4	--	12	6	--	117
Lib	30	39	43.5	3	--	5	6	--	56
Likiep	274	95	74.3	16	1	46	27	--	281
Majuro	1,491	417	78.1	135	14	148	175	1	1,440
Maloelap	255	184	58.1	18	2	116	19	1	283
Mejit	210	47	81.7	11	4	32	28	1	182
Mili	182	306	37.3	19	13	35	46	--	375
Namorik	233	99	70.2	6	1	17	20	--	288
Namu	322	15	95.5	11	--	5	7	1	313
Rongelap	16	95	14.4	2	--	84	--	--	25
Ujae	110	25	81.5	8	--	7	8	--	112
Utirik	145	56	72.1	2	--	38	5	--	157
Wotho	44	16	73.2	2	--	5	4	--	49
Wotje	127	206	38.1	9	4	110	22	--	189
Postal absentees	116	52	69.0	21	6	1	68	2	70
TOTALS	6,215	4,509	57.9	474	404	1,317	933	14	7,602

Table 4-1 (continued)

Source: Official report of the vote as certified by Shiro E. Riklon, Chief Electoral Officer of the Marshall Islands, in a letter to Ambassador John Margetson, President, United Nations Trusteeship Council, January 24, 1984. See also Henry M. Schwalbenberg, S.J., "The Marshallese Plebiscite: No to Commonwealth," (Micronesia Seminar Memorandum 13, April 1984), Table I, p. 2, which differs slightly in the count of votes on Part Two.

Table 4-2

Size of Majorities in Marshall Islands Voting Districts, 1983

	Districts with Majorities voting Yes	Districts with Majorities voting No
Number	16	8
Size of Majority		
50-59%	1	1
60-69%	1	3
70-79%	10	3
80-89%	3	1
90% and over	1	0
Mean Majority	75.4%	70.3%

Source: Figures in Table 4-1

Table 4-3

Voting on Part One by Absentee Voters and Election-Day Registrants in the Marshall Islands Plebiscite, 1983

Type of Voter	Yes	No	Total	Percent Yes	Percent of Total Votes
Voting in person in home district	3,358	2,397	5,855	58.3	53.7
In-person absentee voting in another election district	1,942	1,362	3,304	58.8	30.8
Absentee voting by mail	116	52	168	69.0	1.6
Election-day registrants	799	698	1,497	53.4	13.9
Totals	6,215	4,509	10,724	100.0	100.0

Source: Same as for Table 4-1.

Chapter 5

Western-Style Referendums in Traditional Societies

We have approached our study of the Micronesian plebiscites of 1983 with at least two clear biases. First, we believe that democracy is the best form of government people have ever known -- not perfect, not ideal, not flawless; just better than any known alternative. And second, we believe that free elections are the key institutions of democratic government, whether they are candidate elections, plebiscites, or other kinds of referendums. As we have written elsewhere:

> "the electoral process lies at the heart of democratic government, and the critical difference between democratic and nondemocratic regimes is to be found in whether or not they hold elections and, if they do, what kind."[1]

Given these inclinations, the core question of our study of the Micronesian plebiscites remains: To what extent did those plebiscites measure up to the standards of a Western-style model referendum? Before we give our answers in this concluding chapter, let us briefly set forth our conception of what those standards are.

Western Standards for Democratic Referendums

As we have said before, a plebiscite is a particular kind of a referendum and a referendum is one of the two basic types of democratic elections (the other being a "candidate election," in which voters choose among candidates for public office). We believe that most of those who are concerned with this study's essential concerns will agree that a democratic referendum is one that lives up to at least the following standards:[2]

that a democratic referendum is one that lives up to at least the following standards:[2]

1. The proposition or propositions on the ballot are phrased so as to ofter clear and unambiguous choices on a question or questions of public policy.

2. Substantially the entire adult population is guaranteed the right to vote.

3. The rules for registering voters and casting ballots are written and administered so that each eligible voter can readily cast one, and only one, ballot.

4. No person is denied access to any information he or she wishes that is relevant to making his or her decisions on the issues.

5. All persons or groups that wish to do so have the full and fair opportunity to set forth their views of the issues, including access to the media of mass communications.

6. Campaigns are conducted fairly in that neither law nor violence nor intimidation bars the advocates of any position from presenting their views or prevents the voters from learning them.

7. Votes are cast freely and secretly; and they are counted and reported accurately and honestly.

We repeat what we said in another context: the foregoing standards add up to a Western-style model of democratic referendums; they do not necessarily constitute precise empirical descriptions of how referendums are actually conducted in every detail in any particular democracy. Rather, they define the criteria by which we can evaluate the quality of actual referendums conducted anywhere. Hence when we evaluate referendums, whether in California or Switzerland or Micronesia, we are not dealing with mutally-exclusive Aristotelean categories of democratic referendums that satisfy all the standards in every respect and non-democratic referendums that fall short of the standards in one or more respects. Rather we are dealing with referendums that are more or less democratic, depending on how closely their actual conduct approaches the model's standards.

That is how we shall approach our evaluation of the Micronesian plebiscites of 1983, applying each standard in turn.

Evaluation of the 1983 Micronesian Plebiscites

1. Phrasing of the Propositions. As we saw in Chapter 2, the plebiscite in Palau began with a major controversy over the wording of the ballot's proposition One-B on Section 314 of the Compact. There was a short-lived effort to rephrase the original proposition so as to emphasize the Compact's restrictions on the power of the U.S. to store and transship nuclear materials in Palauan territory rather than the power itself. However, the original wording was restored by court order, and that wording seems to us to be neutral and fair. The FSM and the Marshall Islands profited from Palau's difficulties, and in neither of the later plebiscites was there any significant controversy -- or reason for controversy -- about the wording of the propositions.

In all three jurisdictions, as we have seen, a second proposition asked the voter to choose between "independence" and some "other relationship with the United States" and then, if they chose the latter, to write in the kind of "other relationship" they preferred. The open-ended nature of the second proposition put a considerable burden on the voters, most of whom had little experience or skills in writing about such matters.

The three sets of voters responded quite differently to the difficulties involved in Proposition Two. Of all the persons voting, 75 percent voted on Proposition Two in the FSM, 56 percent in Palau, and 29 percent in the Marshall Islands. The proposition became moot in the FSM and the Marshalls when the Compact was approved. In Palau, where the Compact was declared defeated, the voters who voted on Proposition Two (56 percent of all voters) voted 56 percent for some kind of closer relationship with the U.S. and 44 percent for independence. So far as we can tell, however, their votes on Proposition Two have not had a significant influence on subsequent negotiations, all of which have been directed at making changes so that the Compact can win in a future plebiscite.

On balance, then, it seems to us that, in their final forms, the phrasing of the ballot propositions in all three jurisdictions measured up to our first standard very well.

2. Suffrage. The Micronesian plebiscites satisfied our second standard as well as any referendum anywhere. Every citizen who was eighteen years of age or older on the day of the plebiscite was entitled to vote, the other qualifications were minimal, and the suffrage was as wide as or wider than that in any democratic polity in the world.[3]

3. Registration and Voting. As we have noted, each of the three Micronesian jurisdictions had held quite a number of elections prior to 1983 -- elections for the Congress of Micronesia, for their district legislatures, for their municipalities, and for the members of their new constitutional governments. Moreover, there had been several advisory referendums in Palau and the Marshall Islands, a referendum in all three jurisdictions on the proposed constitution for a Micronesia-wide

federation, and referendums in Palau and the Marshall Islands on their constitutions. Furthermore, at least one referendum in each jurisdiction had been observed and its quality approved by observers sent by the Trusteeship Council of the United Nations. This history meant that all three jurisdictions had well-tested bodies of election laws and administrative procedures, and corps of election administrators experienced in coping with the special problems of the area.

In our judgment, each of the three jurisdictions faced a number of difficult and (to us) unusual problems and handled them well. One problem arose from the fact that for most Micronesians the holding of land rights in a particular locality is so important that they want to be registered to vote in that locality. Yet many of them live and work in other areas, some of them hundreds of miles away in other areas of Micronesia and some of them as far away as Hawaii and the mainland United States. The Micronesian authorities dealt with this problem by making it as easy as possible for voters to vote at locations other than where they were registered. One device was the familiar system of allowing voters to mark absentee ballots prior to election day, place them in sealed double-envelopes with affidavits of eligibility, and mail them to the central counting place for inclusion with the ballots cast in the districts where the absentee voters were registered. Another device, less familiar to Western observers but very useful in Micronesian conditions, was "in-person absentee voting," in which a voter registered in locality A presented himself at the polling station in locality B, took an affidavit of eligibility, marked a ballot, and deposited it in a special box labeled for voters from locality A. The procedure was cumbersome: in most polling places, each affidavit was checked against a list of registered voters to make sure that the person applying was registered and had not already voted, and in several places, notably Majuro and Ebeye in the Marshall Islands, there were too few election officials to handle the unexpectedly large number of voters using the procedure. The result in both places was a bottleneck at the registration table, long lines of voters waiting their turns, and a need to keep the polls open hours after they were scheduled to close. So far as we could tell, however, hardly any voters grew discouraged and dropped out of line. So, despite its administrative difficulties, the new procedure did help to maximize the number of voters participating.

Another special problem arose from the high proportion of young and new voters in the electorate. In Micronesia 53 percent of the population is under the age of eighteen, compared with only 27 percent in the United States. This means that an unusually high proportion of the Micronesian population was coming of voting age near the time of the plebiscites, so there was a special need to make first-time registration as easy as possible. The FSM and the Marshall Islands met the need mainly by instituting election-day registration similar to the system used by four American states. By this procedure unregistered but otherwise eligible voters could go the polls on election day and take an affidavit that they were eligible to vote; their affidavits were then checked against such records as school and hospital records to verify the applicants' ages and residences. There was no effective method of making sure that such persons had not already voted at some other locality, and this disturbed some observers. However, no charges of double voting were made, and we found no evidence that any had taken place. So it seems that the risk of fraud from election-day registration was minimal and its benefits for young people and other first-time voters were considerable.

Perhaps the greatest problem of all was the logistical burden imposed by the scattering of small numbers of voters over great geographical distances. Palau and the Marshall Islands required that the votes be cast locally but counted centrally. That meant that ballots and instructions had to be delivered to the polling stations on all the islands and atolls before election day, and after the election the ballot boxes containing the marked and unmarked ballots had to be returned to Koror (Palau) and Majuro (the Marshalls) for counting. This was not easy in either jurisdiction. There are about 375 miles of ocean between Koror and Tobi, Palau's most distant outer island, and 400 miles between Majuro and Rongelap in the Marshalls. Each of the Micronesian capitals has for some time been served by Air Micronesia, an affiliate of Continental Airlines, which operates relatively large Boeing 727 aircraft -- but visits Majuro, Kwajalein, Ponape, Truk, and Koror only three days a week westbound and three days eastbound. And the outer islands in both jurisdiction have, at best, airstrips that can accommodate only much smaller airplanes, and many have no airstrips of any kind and can be served only by boat. The three governments own and operate a number of relatively large ships for periodic "field trips" to take supplies to their outer islands, but such ships are expensive to operate (in many instances over $1,000 per day) and only a limited number are available. There are plenty of smaller boats, but their utility depends upon relatively calm seas and good weather (in this the Micronesian governments were lucky: the weather just before and after all three plebiscites was moderate-to-good and did not delay boat traffic).

The FSM had the greatest problem of all: the state of Yap in the northwest corner lies 1,650 miles from Kosrae in the southeast corner, and transporting ballots to and from the outer islands to the capitals of the four states was especially expensive and time-consuming.

These logistical difficulties had several consequences. One was the considerable and unvoidable expense of getting the ballots to the outer islands -- and for this reason alone the Micronesian plebiscites had considerably higher costs-per-vote-cast than are known to any Western country. Another consequence was the higher risk of ballot box tampering: in many instances the ballot boxes on outer islands in both jurisdictions were not picked up and delivered to the central counting place until the next day, and this made them more vulnerable to stuffing, spoiling, and other kinds of fraud. Despite these apparent difficulties, however, few complaints were made and none were proved that the boxes had actually been tampered with. In Palau, some anti-Compact leaders complained that some ballots had been delivered in cardboard boxes rather than official wooden ballot boxes (see Chapter 2), but the court held that no evidence of actual fraud had been produced and AEI's scholars and the United Nations observers could find no such evidence. The logistical difficulties also prevented any official announcement of the results until several days after the balloting, but this seems to have been a problem only for impatient outside observers like ourselves.

Some Western observers were concerned with the possibility that the great influence of the traditional chiefs on their followers (see

Chapter 1) might intimidate the voters from participating or expressing their true preferences. As we saw in Chapter 3, there is strong evidence of such intimidation in parts of the Faichuk Islands in the FSM's state of Truk, where some traditional leaders tried to induce their followers to boycott the plebiscite altogether; but even there a number of voters voted despite such pressures, and elsewhere there is no reason to believe that voters were frightened away from the polls. The influence of the traditional chiefs, as we shall suggest below, was manifested in other ways.

Some Western observers were also concerned that the ballots were not truly secret, especially in the FSM. In Palau and most places in the Marshall Islands the on-island voters voted in crude but adequate plywood voting booths, but in the FSM it was customary for voters to mark their ballots while seated in schoolroom desk-chairs placed in the corner of the polling station (some even used the station's walls as "desks"). And in Majuro the Repmar government used "mobile polling stations" -- trucks carrying ballot boxes, polling officials, and policemen, which traveled along roads in rural areas stopping to let voters cast their votes without the benefit of a polling booth. Yet as we watched the votes being cast in Ponape, Truk, and Majuro we did not observe anyone trying to look over a voter's shoulder to see how he or she was voting. It soon became clear that ordinary Micronesians understand the importance of keeping the vote secret, and even the FSM's casual ballot-marking procedures did not appear to lead to any violation of that secrecy.

In the end, the turnout figures tell a great deal about how well the Micronesian plebiscites measured up to the standard of ease of registration and voting. As we have seen, the percentage of the voting-age population voting was 88 percent in Palau, 63 percent in the FSM, and 83 percent in the Marshall Islands. This certainly compares very favorably with turnouts in most Western referendums. For example, in the state referendums in the United States in 1982 the average turnout was 40.2 percent, and the highest in any state was 55.1 percent in Maine.[4] In Switzerland -- to many the very quintessence of Western democracy and certainly the world's greatest user of direct voting -- the average turnout in referendums has been dropping steadily since the mid-1940s, and in the past ten years it has been just over 40 percent.[5] Accordingly, we conclude that the Micronesian plebiscites satisfied the standards of fair voting and full popular eligibility and participation as well most Western democracies and better than those that have made the heaviest use of referendums.

4. Voters' Access to Information. In the 1983 Micronesian plebiscites the voters could acquire information from three main sources: the public information programs, the public campaigns by the proponents and opponents, and private conversations with family, friends, and traditional leaders. Let us look briefly at each source.

In all three jurisdictions, the public information programs were organized by the Micronesian governments and funded by the United States. Each program began by translating the Compact into the indigenous language or languages (one in the Marshall Islands, three in Palau, and eight in the FSM), printing copies of the versions in English and the indigenous languages, and distributing them to the voters. As we have seen, this was a difficult, laborious, and expensive task. In its English version, the Compact is a long (well over two hundred single-spaced typewritten pages) and complicated document written in a legalese that is opaque to most Westerners, let alone Micronesians. Moreover, the translations were probably less than perfectly faithful to the English original if only because the Micronesian languages often had no words or phrases exactly corresponding to the English-language legal concepts and niceties. And to compound these difficulties, the documents were set before people who, as we have seen, are by tradition and custom much more at home with oral than with written communications. Although we have no exact information, it is probable that the printed versions of the Compacts, prepared with such labor and expense, were read carefully by only a handful of citizens in each jurisdiction, and it is hard to avoid asking whether they were worth all that energy and expense. We believe that the answer is Yes, for several reasons. For one, the printed Compacts constituted universally-available and last-resort references for determining just what the Compact provided, and they were more authoritative than any oral summary or interpretation could be. For another, every Micronesian leader we talked to felt that the translations were vitally important evidences of the fact that the Compact was a Micronesian as well as an American document; whether they were for or against the Compact, most Micronesians would have been deeply offended if it were available only in English. And for yet another, in the course of making their line-by-line and concept-by-concept translations the translators became knowledgeable about the Compact's provisions, and many of them played valuable parts in the rest of the voter education programs.

Once the translations were printed and distributed, the other initiatives of the public information programs took full account of

Micronesians' preference for oral over written communications. First, the informants, many of whom were schoolteachers experienced in communicating complicated materials, were trained in the complexities of the Compact's various provisions. Second, they were sent to just about every populated area in each jurisdiction to hold public meetings at which they outlined the Compact's provisions and answered questions about their meaning -- all oral transactions. Third, the public information programs prepared and presented a number of talks on radio (and a few on television) covering the same ground in much the same way; and radio is by far the most important medium of mass communications everywhere in Micronesia. So all the citizens in each jurisdiction had plenty of opportunities to learn about the Compact in ways that were familiar and easy for them. Only a minority (estimates range from 20 to 35 percent of the electorate) attended the education programs' meetings, and a much larger number -- we have no way of estimating exactly how much larger -- listened to some of the radio broadcasts. But the point is that there was plenty of information available to any Micronesian who wanted it, and so the public-access-to-information standard was also well satisfied.

A number of anti-Compact leaders, particularly in Palau and the Marshall Islands, charged that the education programs were inaccurate and biased, and that they were really propaganda for Yes votes rather than neutral presentations of the facts. All that we could learn led us to agree with the judgment of the UN observers that in none of the three cases was there evidence of any deliberate effort by those who administered the public education programs to win Yes votes by giving inaccurate or misleading information or by overpraising the Compact's benefits or concealing its costs. However, we agree with the UN's observers that some anomalies inevitably arose from the fact that the three governments, each of which had negotiated the Compact's terms, thought it was a good deal, and hoped it would be approved, were the agencies planning and conducting the public information programs. Probably the only way around that would have been for an entirely neutral body, such as the UN, to fund and conduct the programs; but so far as we could tell no Micronesians ever requested it, and even if they had it is highly unlikely that the UN would have assumed such a burden. Moreover, the anti-Compact forces had every chance to correct misinformation and make their cases against the Compact. We conclude, then, that the UN observers were correct in their judgment that:

> "[while] there were some occasions [in Palau] when the dividing line between education and advocacy may have become a little blurred. . . .the Mission. . .obtained no concrete evidence to substantiate charges that political education funds had been improperly used to influence voters."[6]

and that:

> "[In the Marshall Islands] care was taken to monitor the work of the teams and in particular to ensure that they did not advocate the acceptance of the compact. We were particularly impressed by the success of the task force members in retaining a very high degree of impartiality. Largely as a result of the work of the political education programme, the Marshallese were able to cast their votes with a knowledge of the major issues involved and with at

least some idea of the alternative constitutional options."[7]

We would add that the education programs mounted by Brother Henry Schwalbenberg in the FSM and the Marshall Islands (see chapters 3 and 4) were important supplements to the official programs. His lectures, seminars, and written materials were complete, lucid, unbiased, and accurate. Moreover, unlike the official public information programs, Brother Henry's presentations were not confined solely to the contents of the Compact; in addition, he provided comparisons between the Compact and each of its alternatives on a number of matters that mattered most to Micronesians. He thus gave them perhaps the clearest factual basis they had for choosing among those alternatives. His presentations and those of the official education programs added up to as complete and accurate a body of information available to the Micronesian voters as any produced for referendums in Western democracies.

5. Access to the Mass Media in the Public Campaigns. As we have seen, in the FSM there was almost no organized public opposition to the Compact and almost nothing that could be called a "public campaign" on the issues beyond the voter education program. Anyone who asked for free time on the government radio station to expound his or her views could get it on a first-come-first-serve basis, but very few people made the request.

In Palau and the Marshall Islands, on the other hand, there were major organized opposition groups and considerable public campaigns on the issues. In both jurisdictions outside organizations and leaders played major roles -- the antinuclear organizations in Palau, and the MIATLP lawyers in the Marshalls. They provided money, campaign materials, speakers, audio and videotapes, and strategic advice to their

Micronesian allies. Whatever may have been their motives for intervening, there is no doubt that they greatly strengthened the local oppositions' efforts and drew considerably more attention to the campaigns than they would otherwise have received. As allies of the local forces they had every right to participate, and our standards for democratic referendums require that opposition forces be given full access to the mass media to make their cases.

We believe that standard was fully met. In both jurisdictions a great deal of free time was made available on the government radio stations to anyone who wished to make presentations on the plebiscite's issues, and in fact the Compact's opponents in both places took advantage of this opportunity more often than its advocates did. In addition, the opposition organizations freely held public meetings and rallies, put up posters, and handed out campaign literature. In the Marshall Islands the opposition also published a large number of full-page advertisements in the leading newspaper and handed out Western-style election souvenirs. Thus it is not surprising that we heard few complaints from opposition leaders in either Palau or the Marshall Islands that they were denied full and fair access to the mass communications media. Quite the contrary. In both places the Compact's opponents made considerably more use of the mass media than its advocates did. But in the Micronesian cultures perhaps they are not the most important channels of political communication and influence.

6. The Role of the Traditional Chiefs. Perhaps the greatest departure from the Western model in the 1983 Micronesian plebiscites was the powerful role of the traditional chiefs. We have seen that in all three jurisdictions, but especially in the FSM and the Marshall Islands,

a large number of voters were more influenced by the private advice given by their traditional chiefs than by the information and arguments set forth by the public information programs or by the public campaigns of the contending sides. We cannot say precisely how powerful the chiefs' influence was compared to other sources of influence, but most observers agree that it was a significant force both for and against the Compact.

Several features of this influence disturb Western observers, including us. For one thing, the voters subject to it do not make their choices as the autonomous individuals beloved of Western democratic theory; rather they, in effect, surrender their decision-making powers to their leaders. For another thing, there is a hint of coercion, direct or implied, that offends Western ideals.

This kind of influence is not, of course, unknown to actual Western polities. Witness, for example, the political influence of landowners over tenants in pre-reform England and France's ancien regime, or the hundreds of thousands of votes "delivered" by bosses and machines in most American big cities at least until World War II. But in the West these practices were and are generally condemned as undemocratic and corrupt, and over the years they have been widely attacked and often abolished. They still exist in a few places, but they have become the exceptions, not the rule. Accordingly, as Western democrats we cannot ignore or welcome their counterparts in Micronesia no matter how deeply rooted they may be in the area's traditional cultures and ways of politics.

We repeat that we do not know exactly how powerful a ròle was played by the traditional chiefs, though we know it was a major force.

We also know that in all three jurisdictions the chiefs were far from unanimous on the desirability of the Compact, with some favoring it and others opposing it. But our concern here is not with the direction of chiefly influence but with its pervasiveness and power. Of all of the elements in the 1983 plebiscites, this, in our judgment, was the one that fell shortest of Western standards of democratic elections.

The generations of young Micronesians educated in American-organized and funded schools since the late 1940s have been educated primarily in Western values and ways of doing things. It may be that as they come of age and begin to take active roles in the Micronesian polities, as many already have, more and more will want to be their own persons politically and not merely the faithful followers of their traditional leaders. It may even be that more and more of the traditional chiefs themselves will become Western-style democratic leaders by putting their ideas and their leadership qualities on the line in public elections. We take it as a good sign that some major chiefs, such as the Ibedul in Palau and Amata Kabau, an iroij in the Marshall Islands, are already doing so. Many aspects of traditional Micronesian cultures are precious and should be preserved, but we do not believe that the sub-rosa political influence of the traditional chiefs is one of them.

Conclusion

When we add up all the observations and judgments made in this and the preceding chapters, we conclude that, all things considered, the Micronesian plebiscites of 1983 measured up very well indeed to most standards of Western-style democratic referendums. On most counts they were as well and fairly conducted as any in Western democracies, and on some counts they were conducted better. This is no small achievement for emerging third-world polities anywhere, but it is particularly remarkable for polities which must hold elections in the logistically and financially difficult circumstances facing Palau, the Federated States of Micronesia, and the Marshall Islands.

So we have little criticism and much praise to distribute. Some of the latter goes to the United States authorities, who by and large trusted the Micronesians to run their own elections. Some of it goes to the Micronesian public officials, elected and appointed, who drew up and administered the election rules. Some of it goes to the Micronesian partisans who organized the campaigns for and against the Compact and conducted them with almost no violence or threats of violence. Some of it goes to the observers sent by the Trusteeship Council of the United Nations, who not only worked hard to observe what was going on but provided counsel and encouragement as well as legitimacy.

In the end, however, most of the credit for this considerable achievement in difficult circumstances goes to the Micronesian peoples. Of all the impressions we gathered in observing the plebiscites, the one that remains most vivid is the sight of the long lines of voters in Majuro and Ebeye standing patiently, many of them for five or six hours, in the high heat and humidity waiting their turn to vote. Very few left until they had voted, they were uniformly cheerful and good-natured about the delay, and they seemed at least as dedicated to their civic duties as the average voters in, say, Berkeley, Bethesda, Vancouver, or Oxford. As one of our scholars put it in describing a voters' queue in the Marshall Islands:

"What was going on in the mind of a lady with a suckling baby who was collecting her ballot at midnight last Wednesday after queueing for six sweaty hours? It seems plain that she really cared about expressing, in all due formality, what she wanted for her country's future."[8]

And the UN observers added in the same vein:

> "We shall all long remember the patient queues of people at Majuro and Kwajalein waiting sometimes for hours in the sun and sometimes late into the night to cast their votes. There could be no more eloquent testimony to the faith of such people in the democratic election process and their determination to play their part in it."[9]

Like other observers, we conclude that the peoples and leaders of the Micronesian polities are strongly committed to Western-style democratic values and procedures and are well prepared to assume their roles in a relationship of free association with the United States. They have waited for over four hundred years for such freedom, and we hope that they will soon pass the remaining barriers that stand in its way.

Footnotes for Chapter 5

1. David Butler, Howard R. Penniman, and Austin Ranney, eds., *Democracy at the Polls: A Comparative Study of Competitive National Elections* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1981), p. 1.

2. We have distilled these standards from the vast literature on the meaning and requirements of democratic elections in general and referendums in particular. The items in that literature which we have found most useful include: *Democracy at the Polls*; Giovanni Sartori, *Democratic Theory* (New York: Praeger Publishers, 1967); Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Brothers, 1942); Carl J. Friedrich, *Constitutional Government and Democracy* (New York: Harper & Brothers, 1937); Robert A. Dahl, *A Preface to Democratic Theory* f(Chicago: University of Chicago Press, 1956); David Butler and Austin Ranney, eds., *Referendums: A Comparative Study of Practice and Theory* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1978); Jean-Marie Denquin, *Referedum et plebiscite* Paris: Librairie generale de droit et de jurisprudence, 1976); and Austin Ranney, ed., *The Referendum Device* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1981).,

3. For the suffrage requirements in Western nations, see Ivor Crewe, "Electoral Participation," in *Democracy at the Polls*, Table 10-1, pp. 220-223.

4. Austin Ranney, "The Year of the Referendum," *Public Opinion*, Dec./Jan. 1983, p. 12.

5. For turnout rates in Switzerland and other Western democracies, see Referendums, ch. 3 and appendices A and B.

6. Report of the United Nations Visiting Mission to Observe the Plebiscite in Palau, Trust Territory of the Pacific Islands, February 1983 (UN Document T/1851, 1983), p. 35.

7. Report of the United Nations Visiting Mission to Observe the Plebiscite in the Marshall Islands, Trust Territory of the Pacific Islands, September 1983 (UN Document T/1865,1984), p. 14.

8. David Butler, "Democracy's Long Late Day on the Dots in the Ocean," The Times (London), September 14, 1983.

9. Report of the United Nations Visiting Mission to Observe the Plebiscite in the Marshall Islands, p. 15.

STATEMENT OF HOWARD L. HILLS, LEGAL ADVISOR OFFICE FOR MICRONESIAN POLITICAL STATUS NEGOTIATIONS REGARDING ESPOUSAL AND SETTLEMENT OF MARSHALLESE NUCLEAR TEST CLAIMS UNDER SECTION 177 OF THE COMPACT OF FREE ASSOCIATION

SUBMITTED FOR THE RECORD OF THE HEARING OF MAY 24, 1984 BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The decision of the United States and the Republic of the Marshall Islands to employ the internationally recognized procedure whereby private claims are settled on a government-to-government basis represents an entirely appropriate and legally correct approach to addressing the very complex political, legal and human concerns which are associated with the Marshallese nuclear test claims. It is the view of the Executive Branch that the Section 177 agreement constitutes an effective and creative means of fulfilling the obligations of the United States under the Trusteeship Agreement to the peoples affected by this nation's testing program in the islands following World War II. Moreover, the Section 177 agreement addresses the needs of those affected by the tests in a manner consistent with the efforts of the United States to fulfill its overall responsibility to promote self-government for the people of the Marshall Islands.

Not surprisingly, attorneys for some of the Marshallese nuclear claimants have expressed opposition to the Section 177 settlement procedure. In testimony before this Committee these attorneys have stated that they would prefer that their ability to litigate nuclear test claims in the future be preserved -- even after the payments and benefits called for by the settlement agreement have been provided to their clients in accordance with that agreement. The primary criticisms of the Section 177 agreement, and specifically the terms of that agreement which provide for the espousal and final settlement of all Marshallese nuclear test claims, can be summarized as follows:

-- The terms for espousal and settlement of claims set forth in the Section 177 agreement are morally objectionable and legally deficient.

-- The United States took advantage of "unequal bargaining power" in the political status negotiations and "forced" the Government of the Marshall Islands to agree to espouse the claims of its citizens.

-- The United States insisted upon the espousal arrangement in order to rid itself of Marshall Islands nuclear claims cases in the Federal courts.

-- The espousal agreement was negotiated without the participation of claimant group representatives, and the claimant groups want their day in court instead of the settlement provided under the Section 177 agreement.

The following discussion responds to these criticisms and many of the specific points made by claimant attorneys before this Committee with respect to the Section 177 agreement.

1. Legal Aspects of Government-to-Government Settlement and Espousal of Claims

Under customary international law relating to the responsibility of states for injuries to aliens, it is universally recognized that a government has discretion to espouse and seek settlement of the claims of its citizens arising from the acts of a foreign government. The espousal procedure evolved in international practice to enable states to conduct foreign relations free of the difficulties which would result if the domestic courts of a state could interfere with foreign policy initiatives in the course of adjudicating private claims. In addition, espousal enables a state to seek on behalf of its citizens a just settlement of claims against another government when adjudication of such claims in the courts of the foreign government is not possible.

The United States has incorporated the espousal procedure into this nation's Constitutional process and practice of international law. The United States Supreme Court has affirmed the authority of the President to espouse and settle claims of individual citizens under treaties, Congressional-Executive agreements and executive agreements. See, Dames & Moore v. Regan, 453 United States 654, (1981). In leading cases on this issue the Supreme Court has determined that, for purposes of our Constitutional system, the international practice of espousal is an incident of the foreign affairs authority of the President under the treaty-making power. See, United States v. Pink, 315 United States 203, (1942). Under current United States and international practice, an espousal of claims is a government-to-government transaction and does not require consent of the individual claimants concerned. Such an espousal and settlement of claims generally has the effect of curtailing or eliminating altogether the ability of the claimants to pursue their claims in the courts of the espousing state. In some cases, the espoused claims are committed to a special tribunal or arbitration in lieu of providing access to the courts. In other cases, the terms of a final settlement of the claims involved are set forth under the agreement between the governments involved. The Section 177 agreement incorporates both of these procedures by providing for payments and other measures to settle certain known claims, and providing also for adjudication and payment of other claims by a special tribunal.

The Marshallese claims arising from the United States atmospheric nuclear testing program presented the two governments involved with an opportunity to employ a government-to-government settlement procedure as an affirmative policy initiative. A variety of circumstances supports this view of the Section 177 agreement as a creative, just, and legally correct procedure for settling these claims:

-- It was the position of the Marshall Islands that as a matter of the political and legal rights of the Marshallese people, settlement of the nuclear test claims should be reached in the context of the political status negotiations (see item 2, below). The Constitutional Government of the Marshall Islands did not want the United States to be released from its Trusteeship obligations until suitable arrangements had been made to deal with the effects of the nuclear tests on a long term basis.

-- For its part, the United States Government concluded that a negotiated political settlement under the Compact -- rather than litigation -- would provide the best means for the United States to fulfill its obligation to compensate those affected by the testing program. This approach was considered preferable because years of costly and protracted litigation could only complicate and interfere with efforts to obtain final resolution of these claims. Government-to-government settlement of the claims would eliminate the liability issue and enable the United States to address the Marshallese claims in accordance with the terms of the Section 177 agreement. Unless the liability issue was eliminated in this manner the United States would be forced to adopt an adversary posture toward these claims in order to assert its valid defenses in pending court cases.

-- In keeping with United States foreign policy objectives embodied in the Compact, this Government had an interest in resolving the issue of the nuclear claims in connection with termination of the Trustesship so that the free association relationship would not be impaired by lingering legal and political friction associated with those claims. Consistent with their desire to achieve termination of the Trusteeship in favor of constitutional self-government in free association with the United States, the elected leaders of the Marshall Islands shared this interest. Thus, with respect to the nuclear claims, both governments recognized that the process of establishing this new political relationship presented an opportunity to provide an appropriate mechanism through which the United States could meet its obligations to the affected individuals without becoming entangled in the legal liability issue. Specifically, the institution of constitutional government and the process of transition to self-government and Marshall Islands sovereignty under the terms of the Compact of Free Association provided a government-to-government framework for dealing with the nuclear claims which had not existed previously.

-- This approach was entirely consistent with Congressional intent as expressed in numerous United States laws providing compassionate payments and benefits to individuals affected by the testing program. In enacting various pieces of legislation over the last two decades providing funds for ex gratia payments, medical services and rehabilitation of radiation-damaged islands, Congress has declared that certain of the payments made, and the services rendered, constitute final settlement of all claims based on the injuries or losses in connection with which such payments or services were provided. (See, Public Laws 88-485, 94-367, 95-134, as amended by P.L. 96-205. In the period since the testing program was terminated the United States has expended over $160 million in direct payments and benefits to the people of the four atolls affected by the tests -- Bikini, Rongelap, Utrik and Enewetak). In each of these cases Congress clearly concluded that a legislative remedy was appropriate. The subsequent filing by Marshallese claimants of several law suits in federal courts alleging over $5 billion dollars in damages demonstrates the need to dispose of the liability issue through employment of a legal mechanism or procedure certain to be sustained if tested in the courts. It is the judgment of the Executive Branch that the settlement procedure set forth in the Section 177 agreement will withstand the legal challenge which attorneys for the Marshallese litigants have already promised to mount. Presumably, the Marshallese nuclear test claimants will dispute the validity and legal effectiveness of Congress' previous unilateral statutory declarations and repudiate waivers of claims which were required by Congress in order to receive ex gratia payments and services. The United States quite properly concluded that espousal of the Marshallese claims by the Constitutional Government of the Marshall Islands and settlement of those claims under the terms of a negotiated government-to-government agreement represents the only legally and politically effective means of meeting our obligations to the affected islanders while simultaneously limiting our financial liability to a definite amount.

While unique in certain respects, the Section 177 agreement conforms with international practice in the area of espousal of claims. This is not to say that no novel or interesting issues arise from espousal of claims by the Republic of the Marshall Islands in the context of its emergence from trusteeship to sovereign self-government in free association. For example, witnesses before this Committee have suggested that the espousal and settlement procedure contained in the Section 177 agreement is inconsistent with the general principle that governments only espouse claims of persons who were citizens of the espousing government at the time the claims arose. On that basis questions have been raised with respect to the ability of the Constitutional Government of the Marshall Islands to espouse the claims of its citizens arising from the nuclear testing program in light of the fact that the present government did not exist at the time of the primary events from which those claims arose. However, the contemporaneous citizenship principle referred to above arises from cases which generally involved persons who acquired citizenship of a state and subsequently requested the government of that state to espouse claims pre-dating their acquisition of citizenship. It is the prerogative of any government which has been requested to espouse the claims of its citizens to decline to do so, and one factor which might be considered or relied upon in determining not to espouse a particular claim or group of claims is acquisition of citizenship after the occurance of the events from which the claims arose. In distinct contrast, where a new government is established and determines to espouse claims of its citizens arising from events prior to such establishment, and together with another government exercises its discretion to adopt a government-to-government settlement procedure, the contemporaneous citizenship issue becomes legally irrelevant.

Even where the contemporaneous citizenship principle is relevant, there are exceptions to its application which have been recognized by the United Nations and in international practice -- and the Marshallese claims involve factual and legal circumstances which would give rise to such an exception. However, it is the United States' view that the issue of contemporaneous citizenship simply does not arise under the Section 177 agreement. Settlement of pre-existing claims is frequently a part of the process whereby nations recognize and establish relations with new governments. Moreover, upon its approval by Congress and entry into force the Compact, and particularly the Section 177, will in and of itself establish an international legal basis for its implementation notwithstanding any of the more theoretical principles of customary practice.

The United States and the Marshall Islands are confident that the espousal provisions of the Section 177 agreement will withstand legal scrutiny, and that the wisdom and concern for human values which guided both governments in reaching agreement on its terms will be recognized in the years ahead.

2. United States "Imposition" of Nuclear Claims Settlement

It is the view of the Executive Branch that the Section 177 agreement is a comprehensive and equitable settlement of all claims arising from the nuclear testing program, and that settlement of those claims under terms which address both past claims and possible future claims is appropriate as the United States and the Republic of the Marshall Islands prepare for termination of the Trusteeship and initiation of a new international political relationship between them. However, as the following record of the negotiations demonstrates, the United States did not "impose" a nuclear claims settlement upon the Marshallese people or their Government.

In April of 1978, representatives of the United States and the peoples of the Trust Territory met at Hilo, Hawaii to determine the basis upon which negotiations could go forward with respect to the the future political status of the Micronesian peoples upon termination of the trusteeship. On April 9 of that year the parties to the Hilo talks signed the Statement of Agreed

Principles for Free Association, which established the parameters within which the Compact was negotiated. At the Hilo meeting the representatives of the Marshall Islands formally requested that the agreement on free association make provision for the settlement of claims arising from the nuclear testing program. The stated purpose of the Marshall Islands representatives in taking this position was to ensure that the United States would fulfill its previously acknowledged responsibilities under the Trusteeship Agreement to the Marshallese people affected by the testing program.

The Compact of Free Association was initialled in 1980 by the United States and the elected chief executive of the newly-established constitutional government of the Marshall Islands. The initialled Compact included Section 177, which called for settlement of the nuclear claims. After the Reagan Administration's Micronesian policy review determined that the initialled Compact -- including Section 177 -- provided the basis for concluding the political status negotiations, discussions aimed at producing a separate agreement settling the nuclear claims were resumed in April of 1982. Just as the Marshall Islands Political Status Commission had done in 1978, at the April 1982 meetings in Majuro the elected leaders of the Constitutional Government of the Marshall Islands informed the United States that it would not be possible to complete the political status negotiations without agreeing upon the terms of a complete and final settlement of the nuclear claims. Indeed, at the beginning of the Majuro talks the Marshall Islands made it clear that no negotiations on any other issue could take place until this issue had been resolved.

It was in this context that the United States presented its position that final settlement of all claims could best be achieved through the espousal procedure. As explained above, it was the United States position that elimination of the legal liability issue was crucial to establishing a framework within which the needs of those affected by the nuclear tests could be resolved. After considering the United States position the Marshall Islands determined that in connection with Trusteeship termination and the establishment of free association it would incorporate into its legal and political system the doctrine of espousal as practiced in the international community, and thereby provide for settlement of the nuclear claims.

In light of this background it is correct to observe that the issue of settling the nuclear claims has become intertwined with the larger historic process of self-determination for the Marshallese people as a whole. However, it would be irresponsible and provocative to suggest, as some have, that settlement of the nuclear claims was the price which the United States demanded for termination of the Trusteeship. The two governments determined after lengthy and very difficult negotiations that settlement of the claims on a government-to-government basis was the most constructive and responsible course. The agreement reached was put to a vote, and the nuclear claims settlement was one of the most widely-discussed issues during the pre-plebiscite debate on the Compact. That the agreement reached was approved by the people of the Marshall Islands, including most of the atolls whose people are maintaining court actions which will be extinquished, reveals that the people of the Marshalls are cognizant of a common purpose and destiny to be fulfilled by uniting under the flag of their new Republic.

No amount of pressure which the United States could have put upon Marshallese government leaders behind closed doors could have produced the plebiscite results which express the desire of the people to resolve the issues of the past and initiate a new era in United States/Marshallese relations. While financial grants, providing rememdies for past mistakes and resolution of thorny legal issues were all necessary elements of a political status agreement between the United States and the Marshall Islands, the two governments were motivated primarily by the higher purpose of ensuring that the political, social and economic aspirations of the people of the Marshall Islands will be realized in the context of a stable long-term relationship with the United States.

3. Termination of court cases.

In the law suits which have been filed in the courts of the United States based on Marshallese nuclear test claims, the United States has asserted what it regards as sound jurisdictional and substantive defenses. The United States was and continues to be fully prepared to litigate those claims. The Compact and the Section 177 agreement in no way represent a judgment by the United States of the value or legal validity of the claims asserted against it by the Marshallese nuclear test claimants. To the contrary, the Section 177 agreement is entirely a political settlement negotiated on a government-to-government basis, in part to avoid entanglement in the political and legal issues which inevitably would arise in connection with adjudication of those claims on their merits. It is the desire of the United States to terminate the Trusteeship and begin to conduct relations with the Marshallese people acting through their constitutional government which makes the Section 177 agreement attractive to this government. Termination of the court cases is a necessary and proper measure to take at this time to ensure the attainment of that objective. For it is the view of the United States that neither having the court cases dismissed nor prevailing on the merits would constitute a politically satisfactory disposition of the Marshallese nuclear test claims. Thus, while the United States regards the present posture of the court cases as favorable to its legal position, the Section 177 agreement reflects the desire of the United States to meet its obligations to the peoples affected by the testing program and address their claims in a just and adequate way appropriate to their legal status under the Compact.

4. Claimant participation in negotiations and acceptance of settlement agreement.

During the extended negotiations between the United States and the Marshall Islands on the Compact of Free Association a great deal of attention was focused upon proposals for implementing Section 177 of the draft Compact, which called for settlement of all claims related to the United States nuclear testing program conducted in the Marshall Islands between 1946 and 1958. The proposed procedure whereby the Marshall Islands Government would espouse and settle those claims was an entirely new concept to the Marshallese people, and the espousal provisions were naturally the subject of intense interest to the nuclear test claimants and the general population in the Marshalls both before and after the Compact and the Section 177 agreement were signed.

The Marshall Islands included in its delegation to the negotiations both legal counsel and elected officials representing the nuclear claimant groups. Because the negotiations were conducted on a government-to-government basis, as explained below in greater detail, complete agreement with the various claimant groups on the value or merits of their claims -- or the terms under which all claims would be espoused and settled by their government -- was neither sought nor achieved. However, through their involvement in the negotiation of the initial agreement, and the role they played in negotiations to revise that agreement to meet their objections, the nuclear claimants and their lawyers became well-acquainted with the espousal provisions of the Compact and the basis upon which the two governments formally agreed to such an arrangement. Indeed, significant elements of the final agreement are based on proposals made by lawyers for the claimant groups. While these lawyers did not actually negotiate or agree fully with the final terms of the agreement, for them to pretend that they did not participate in the process is absurd.

During the public information program conducted prior to the Marshall Islands plebiscite on the Compact, the nuclear claims settlement procedure set forth in the agreement concluded pursuant to Section 177 was the subject of extensive discussion and debate. Lawyers for groups of islanders on whose behalf nuclear claims suits had been filed in United States courts stated that their clients were not satisfied with the settlement and would vote against the Compact. However, the plebiscite results revealed that those in whose name nuclear claims suits had been filed voted to approve the Compact and the Section 177 agreement at a slightly higher rate (58.5%) than that reflected by the Marshall Islands-wide popular vote (58%). Moreover, the Compact and Section 177 agreement were approved by the people of eight out of eleven separate island communities some or all of the residents of which had been named as plaintiffs in nuclear test claims actions against the United States in the Federal Courts. Of the four island groups whose claims are the subject of special settlement provisions in the Section 177 agreement (Bikini, Enewetak, Rongelap, Utrik), two (Utrik, Enewetak) voted to approve the Compact and the nuclear claims agreement. While the overall approval rate among the people of those four atolls was 47.4%, the overall approval rate for all other Marshallese nuclear claimants was over 64%. Shortly after these plebiscite results had been tabulated the Marshall Islands legislature, the members of which include the elected representatives of nuclear claimant groups, approved the Compact and the Section 177 agreement in accordance with the procedures required under the Marshall Islands Constitution.

Notwithstanding the results of the plebiscite and approval of the Compact by the Marshall Islands Government in accordance with its Constitution, lawyers who filed court actions on behalf of Marshallese claimants and the elected representatives of claimant groups -- including some of those voting to approve the agreement -- have made statements to this Committee characterizing the Section 177 agreement -- and particularly the espousal provisions thereof -- as legally and morally objectionable. At the same time these claimant representatives have indicated their desire to receive the payments and benefits provided for under the settlement agreement. Moreover, in statements made before this Subcommittee and other committees of this Congress, representatives of these nuclear claimants have stated that they do not oppose approval of the Compact or the Section 177 agreement, but want the United States to take measures and make payments in addition to those provided in the agreement.

Thus, to some extent the actions of claimant representatives in raising objections with respect to the Section 177 agreement may be viewed as a tactic aimed at obtaining additional benefits for the claimants before the terms of the agreement take effect. In the Administration's view the Section 177 agreement fully and fairly resolves the Marshallese claims. However, taking the Bikini people as an example, the reasons for the tactic of seeking ever greater compensation become apparent:

-- The 1,000 Bikini people (the original Bikini community removed from the 2.3 sq. miles of land in Bikini in 1946 consisted of 167 persons) have recieved over $27 million in payments for a special Bikini people's trust fund and resettlement program due to their inability to return to their contaminated atoll at this time. This has been in addition to over $12 million dollars expended in recent years alone to provide housing, construction projects and special support services to the Bikinians at locations in the Marshall Islands where they have been resettled.

-- Under the Section 177 agreement the Bikinians will receive an additional $75 million in full settlement of their claims. In addition, that agreement provides for long-term medical care and radiological monitoring for the Bikinians, and commits the United States to resettle them on Bikini atoll when its islands become habitable again. This settlement is just and adequate, even if it is assumed that Bikini may not be habitable for many years.

-- In light of their frequent statements to the effect that they expect to receive the benefits of this government-to-government settlement, the Bikinians' objections to the Section 177 agreement and the lawsuit which they recently filed against the United States seeking cleanup of their atoll -- at an estimated cost of between $100 million and $1 billion -- may perhaps best be understood as an effort to obtain relief not provided by the Section 177 agreement.

The same conclusion can be reached with respect to the other claimant groups, each of which has received medical care, island rehabilitation assistance (at Enewetak the cleanup effort cost over $100 million), and other assistance as appropriate given the nature of the losses or injuries suffered. Because the Section 177 agreement will settle all claims and foreclose United States courts to the Marshallese claimants in the future, any measures or payments which Congress might choose to authorize in addition to those provided under the agreement would be on an _ex gratia_ basis. At present the Marshallese claimants view the lawsuits they have filed alleging over $5 billion in damages against the United States as leverage in their efforts to obtain such _ex gratia_ relief (the Bikinians are seeking $450 million in addition to cleanup of and return to their atoll, the Enewetakese are asking for $500 million and a consortium of lawyers representing other claimants are seeking over $4 billion). While it is understandable that they would seek commitments at this time for relief which they fear Congress might not grant once the Section 177 agreement is in effect and the threat of court actions and liability is removed, it is the United States view that the Section 177 agreement provides a comprehensive and permanent means of addressing the nuclear test claims.

This view is supported by the fact that the Marshall Islands Claims Tribunal established under the Section 177 agreement will have the necessary funding and the authority to adjudicate and pay claims not otherwise compensated under the provisions of the agreement, and the Marshall Islands Government may seek further assistance from Congress should changed circumstances render the terms of the agreement clearly inadequate. Thus, it is simply false to say, as lawyers for the claimants have on numerous occasions, that the United States is attempting to walk away from its obligations or that the Section 177 denies to the claimants their day in court. In brief, the Section 177 agreement does not foreclose further measures for the benefit of those claimants, and they will have access in the future to an impartial claims tribunal for purposes of obtaining payments in addition to those provided under the agreement. The only requirement is that they be able to prove their claims in accordance with procedures and standards promulgated by the tribunal in accordance with the Section 177 agreement and the constitutional processes of the Marshall Islands. During the first fifteen year period this tribunal will have access to over $45 million to pay claims, and thereafter will have access to a potentially perpetual fund derived from investment and growth of the corpus of the original $150 million fund. The claimants and their attorneys participated in the negotiations which produced these arrangements and understand them perfectly well.

It comes as no surprise, however, that they are seeking payments and benefits in addition to those provided in the agreement. Indeed, we would be surprised if they did not express dissatisfaction with the decision to settle these claims on a government-to-government basis and do everything in their power to maximize their leverage and pry loose additional money before the Compact and Section 177 agreement take effect. Nevertheless, in the plebiscite a majority of the people of the Marshall Islands and most of the islands with nuclear claims expressed their view that the Section 177 agreement is a fair and adequate settlement, and their elected representatives acted in a manner consistent with that view in approving the Compact in accordance with the Marshall Islands Constitution. Consequently, the Administration has urged Congress to approve the Compact and the nuclear claims agreement in fulfillment of the obligation of the United States to promote self-government in the Marshall Islands in accordance with the freely-expressed wishes of the people.

STATEMENT OF HOWARD L. HILLS
LEGAL COUNSEL AND DEPARTMENT OF DEFENSE ADVISOR OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS: CONSTITUTIONAL AND INTERNATIONAL LEGAL ASPECTS OF THE COMPACT OF FREE ASSOCIATION

Introduction

On March 30, 1984 President Reagan transmitted to Congress a Compact of Free Association which, if approved, will define a new and unique relationship between the United States and two of the constitutional governments in the Trust Territory of the Pacific Islands.1/ As the United States constitutional process for approval of the Compact of Free Association proceeds it is appropriate to address certain concerns which have been expressed by members of Congress and others with respect to the procedure which the Executive Branch followed in negotiating the Compact, as well as those which it proposes be followed in approving the Compact and seeking termination of the trusteeship. For example, questions have been posed as to whether or not the policy of the present Administration -- as well as the three preceding administrations -- to seek termination of the trusteeship based on negotiated political status agreements has taken into account

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1/ Compact of Free Association, opened for signature October 1, 1982 (United States - Federated States of Micronesia, October 1, 1982; United States - Republic of the Marshall Islands, June 25, 1983). For recent report on Compact and history of negotiations leading to its signature, *see*, Armstrong and Hills, *The Negotiations for the Future Political Status of Micronesia 1980-1984*, 78 Am J. INT'L L. 484 (April 1984). The Republic of Palau also signed the Compact, but has not completed its constitutional process for approval of the agreement. *See*, Armstrong and Hills, *id.* Consequently, the Reagan administration has submitted the Compact to Congress for approval as to the Federated States of Micronesia and the Marshall Islands. *See*, Letter from President Reagan to the Congress of the United States, (March 30, 1984), urging enactment of the Compact of Free Association. 20 Wkly. Comp. Pres. Docs. 44-445.

adequately Congressional interests and responsibilities with respect to trusteeship affairs. Concerns have also been expressed regarding the constitutional implications of Compact approval in the context of the federal government's legal and political relationships with United States territories. This paper will address these issues, as well as international legal aspects of free association which Congress will be considering.

I. TERRITORIAL CLAUSE ISSUE

Members of Congress and interested observers have expressed the view that in order to ensure the orderly formulation and implementation of United States policy relating to Micronesia, perhaps the Congress rather than the President should initiate any changes with respect to governance of Micronesia in the future -- acting pursuant to the territorial clause as it does with respect to United States territories.2/ The contrary view,

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2/ Congress is recognized as having plenary authority over territories and possessions of the United States under Article IV, Section 3, Clause 2 of the Constitution, which reads: "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States..." In light of the territorial clause members of Congress have on numerous occasions questioned the propriety of Executive branch initiatives relating to the administration of territories--including the trust territory. _See_, Statement of Ron de Lugo, Delegate to Congress from the Virgin Islands, Hearings on Budget of the Government of the United States for Fiscal Year 1985, Trust Territory of the Pacific Islands, (Feb. 7, 1984), Subcommittee on Public Lands and National Parks, House Committee on Interior and Insular Affairs, 98th Cong., 2d Sess.; also, Statement of Jonathan M. Weisgall, Legal Counsel for the People of Bikini, Id., for an interesting analysis of this issue. _See_, Letters of Senator James A. McClure and Representatives Udall and Lujan, _infra_ notes 33 and 34, with respect to Congressional oversight of Executive branch actions affecting territories.

proposed here, is that, due to the unique status of the trust territory, the authority of the political branches of the U.S. Government over trusteeship affairs derives from constitutional sources other than the territorial clause, and that the decision to negotiate a new political status for the peoples of the trust territory represents a constitutionally proper exercise of the President's authority to conduct foreign affairs.3/ Moreover, it is suggested that the territorial clause issue is more academic than of real constitutional substance. For by proceeding on the premise that the negotiated instruments which will provide the basis for termination of the trusteeship will be subject to Congressional acceptance, as was the instrument of its creation, the Executive branch has ensured that the constitutional authority of the Congress and the President will be exercised

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3/ The President's foreign affairs authority derives from the treaty-making power granted under Article II, Section 2 of the United States Constitution, and it is recognized that the President is the sole organ of the federal government in the field of international relations. U.S. v. Curtiss-Wright Export Corporation, N.Y. 1936, 57 S.Ct. 216, 299 U.S. 304, 81 L.Ed. 255. U.S. v. Pink, N.Y. 1942, 62 S.Ct. 552, 315 U.S. 203, 86 L.Ed. 796. Both the current administration of trusteeship affairs and future implementation of free association as defined in the Compact involve significant issues of domestic law and policy, particularly with respect to operation of federal programs and services and conducting relations with governments having a degree of international personality but also a unique and close political relationship with the United States. Nevertheless, negotiations with representatives of foreign citizens regarding political status agreements which will provide the basis for terminating an agreement between the United States and the Security Council of the UN also involves foreign policy interests. See, note 30 and part II, infra, regarding applicability of territorial clause to trusteeship affairs. Even where the territorial clause is clearly applicable, the President is not foreclosed from acting on behalf of the United States or undertaking policy initiatives with respect to territory or property of the United States. United States v. Midwest Oil Co., 236 U.S. 459 (1914).

with respect to trusteeship termination in an entirely proper and complementary manner.4/

Specifically, with respect to agreements establishing future political status arrangements which will be in effect upon termination of the trusteeship, negotiation of appropriate status agreements by a representative of the President and their subsequent approval by both Houses of Congress is precisely the correct constitutional procedure to be employed. This negotiation and approval process is firmly rooted in United States constitutional practice with respect to Congressional-Executive agreements, of which the Trusteeship Agreement and the NMI Commonwealth Covenant are both relevant examples.5/ Thus, for the

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4/ The Congressional approval process contemplated for the Compact is essentially the same as that employed to approve and enact the Trusteeship Agreement for the Former Japanese Mandated Islands, approved by the United Nations Security Council April 2, 1947, and by the United States July 18, 1947, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189, (hereinafter "Trusteeship Agreement"), under which the United States assumed the role of administering authority for the trusteeship. The joint resolution of July 18, 1947, authorized the President to approve the Trusteeship Agreement following its approval by the Security Council. The draft joint resolution submitted to Congress by President Reagan would approve the Compact, noting its approval by the peoples concerned.

5/ Like the Trusteeship Agreement, the Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States of America was approved in the form of an Executive-Congressional agreement, U.S. Pub. Law 94-241, 90 Stat. 263 (1976), reprinted at 48 U.S.C. 1681, note. For discussion of constitutional practice relating to such agreements, see McDougal and Lans, "Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy," 54 Yale L.J. (1945) 181, 203-206 and 14 Whiteman, Digest of International Law, 234-240, (1968); also, for views of U.S. Supreme Court respecting international legal and U.S. constitutional status of international agreements other than Article II treaties, see Weinberger v. Rossi, 456 U.S. 25 (1982).

Executive branch to negotiate the Compact and submit it for approval in the form of a Joint Resolution does not infringe upon Congressional authority to make policy for United States territories, but rather accords with the allocation of constitutional authority over trusteeship affairs which has been established through the separate and combined actions of both branches of government in creating and providing for administration of the trusteeship. The following analysis of the development and implementation of the Trusteeship Agreement and Congress' role in the process supports this view.

The Trusteeship Agreement

The Trusteeship Agreement between the United Nations Security Council and the United States was negotiated by representatives of the President in the context of an historical series of foreign policy initiatives with respect to the status and disposition of areas detached from enemies as a result of the war, as well as areas formerly under League of Nations mandates. The principles expressed in the Atlantic Charter with respect to disposition of territory,6/ and the adherence of the United States and twenty-five other nations to those principles in the Declaration of Washington,7/ laid the foundation for inclusion

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6/ Atlantic Charter, Joint Declaration by the President of the United States and the Prime Minister of the United Kingdom August 14, 1941, (55 Stat. 1603; Executive Agreement Series 236). By this declaration the United States affirmed that all peoples should be restored to their "sovereign rights and self-government," and that no "territorial changes" should occur except in accordance "with the freely expressed wishes of the peoples concerned."

7/ Declaration of the United Nations, signed at Washington, January 1, 1942, (55 Stat. 1600; Executive Agreement Series 236).

in the United Nations Charter of provisions establishing the international trusteeship system.8/ The United States delegation to the 1945 San Francisco Conference of the United Nations recognized that the Micronesian islands--as both an area detached from the enemy and a formerly mandated territory--would properly be subject to disposition in accordance with the trusteeship provisions to be included in the UN Charter. At the same time, America's experience in the islands during the war made it clear that disposition of the islands formerly under Japanese mandate involved special national security considerations for the United States. Thus, the United States proposed that trusteeships for strategic areas be designated as such, and that the functions of the United Nations relating to trusteeships for areas designated as strategic be exercised by the Security Council rather than the General Assembly.9/ This arrangement for strategic trusteeships was incorporated into Chapter XII of the United Nations Charter, and on that basis President Truman proposed on November 6, 1946, that the mandated islands be placed in trusteeship and designated

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8/ *See*, Article 77, Charter of the United Nations and Statute of the International Court of Justice, Signed at San Francisco, June 26, 1945, ratified by U.S. Senate July 28, 1945, Approved by President August 8, 1945, entered into force October 24, 1945 (59 Stat. 1031; Treaty Series 993).

9/ *See*, Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, The Secretary of State, June 26, 1945, pp. 126-132, *reprinted* at, 1 Whiteman, *Digest of International Law* 734-739 (1968). Also, *see*, Bunche, "*Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations*," XIII Bulletin, Department of State, No. 340, Dec. 30, 1945, pp. 1037, 1043; Also, Vol. II, *United States Naval Administration of the Trust Territory of the Pacific Islands* (1957) pp 66-68. For more detailed explanation of UN functions relating to the trusteeship *see* note 54 *infra*.

as strategic under terms agreeable to the Security Council and the United States.10/ On February 17, 1947, a draft trusteeship agreement was transmitted to the Security Council by the United States representative.11/

The negotiations and debate which took place in the Security Council regarding the draft agreement bear directly upon our views today about the status of the Trusteeship Agreement and the islands themselves in the context of U.S. constitutional law. For the question of the status of the trust territory under this nation's constitution and laws was specifically discussed in connection with Security Council review of Article 3 of the agreement, which--as finally approved--reads:

> "The administering authority shall have full powers of administeration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the trust territory, subject to any modifications which the administering authority may consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements."12/

The record of Security Council deliberations with regard to this provision reflect that the words "as an integral part of the United States" had appeared after "subject to the provisions of this agreement" in the original United States draft. This

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10/ See, 1 Whiteman, Digest of International Law, pp. 769-770, (1968).

11/ Id.

12/ U.S. T.I.A.S. 1665; 61 Stat. 3301, 3302; 8 U.N.T.S. 189, 192.

language was consistent with language contained in the trusteeship agreements for non-strategic areas which had recently been approved by the General Assembly, and the United States expressely acknowledged that the words "integral part" did not "imply sovereignty over the territory."13/ However, at the request of the Soviet Union that phrase was deleted prior to approval of the agreement by the Security Council. In agreeing to this amendment the United States Representative to the Council, Senator Warren R. Austin, made the following remarks:

> "...In employing the phrase 'as an integral part of the United States,' in article 3, my Government used the language of the original mandate and also the language used in six of the agreements recently approved by the General Assembly. It does not mean the extension of United States sovereignty over the territory, but in fact it means precisely the opposite.
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> "There has, however, been some misunderstanding on this point and, for the sake of clarity, the United States Government is prepared to accept the amendment suggested by the Soviet Union, and to delete the phrase. In agreeing to this modification, my Government feels that for record purposes it should affirm that its authority in the trust territory is not to be considered as in any way lessened thereby. My Government feels that it has a duty towards the peoples of the trust territory to govern them with no less consideration than it would govern any part of its sovereign territory. It feels that the laws, customs and institutions of the United States form a basis for the administration of the trust territory compatible with the spirit of the Charter. For administrative, legislative and jurisdictional convenience in carrying out its duty towards the peoples of the trust territory, the United States intends to treat the trust territory as if it ware an integral part of the United States...."14/

13/ Draft Trusteeship Agreement for the Japanese Mandated Islands, op. cit., pp. 4-5; U.S. Delegation Doc. US/S/119, p. 2.

14/ U.N. Security Council Off. Rec., 116th Meeting, Mar. 7, 1947, p. 473. The materials cited on this point are discussed at 1 Whiteman, Digest of International Law, (1968) pp. 777-778.

Upon completion of this and other similar exercises in paradoxical intentionality in the formulation of its provisions, the Trusteeship Agreement was agreed upon and approved by the Security Council at the seat of the United Nations, Lake Success, Nassau County, New York, on April 2, 1947.

After concluding the international negotiating process and obtaining Security Council approval of the Trusteeship Agreement, the President submitted it to Congress. In 1947 members of Congress had serious concerns with respect to creating the trusteeship, just as some members now have concerns regarding its termination. There were members of Congress who wanted to conclude a treaty of peace with Japan under terms which would enable the United States to annex the formerly mandated islands then occupied by the United States,15/ while others were concerned that United States security interests might be compromised by placing the islands under an international legal regime. These and other similar concerns, and the rationale which led members of Congress to support approval of the Trusteeship Agreement notwithstanding certain doubts, found expression on the

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15/ When the Treaty of Peace with Japan was signed at San Francisco on September 8, 1951, (U.S. T.I.A.S. 2490; 3 UST 3169; 136 U.N.T.S. 45), it contained the following acknowledgement that the formerly mandated islands had been placed under the trusteeship system:

> "Article 2...(d) Japan renounces all right, title and claim in connection with the league of Nations Mandate System, and accepts the action of the United Nations Security Council of April 2, 1947, extending the trusteeship system to the Pacific Islands formerly under mandate to Japan."

floor of the House of Representatives on July 11, 1947. On that occasion Congressman Mansfield of Montana made the following remarks:

> "...Insofar as my own personal views on the mandates are concerned...I would prefer to have the United States assume complete and undisputed control...We need these islands for our future defense, and they should be fortified wherever we deem it necessary. We have no concealed motives because we want these islands for one purpose only and that is national security. Economically they will be a liability, socially they will present problems, and politically we will have to work out a policy of administration. No other nation has any kind of a claim to the mandates. No other nation has paid the price we have. These views of mine are not new nor are they the results only of my recent investigative trip to the Pacific. Rather, my stand has been accentuated by what I have seen and I am more firmly convinced than ever of our great need for control of the mandates.
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> "If, however, it does become necessary to creat a trusteeship for these islands, I would favor the proposals made by our State Department and President Truman which would place the mandates under the United Nations with the consideration that they should be cataloged as a strategic area outside the control of the Trusteeship Council. On this basis, supervision would be exercised by the Security Council which has jurisdiction over such strategic areas in the interests of collective security. But, and this is important, the United States has a veto over the Security Council should it ever want to assert effective control... It is worth remembering also, that until a treaty of peace is signed with Japan we have no legal title to the mandates."16/

This statement acknowledges that the Trusteeship Agreement had certain advantages for the United States. First, annexation of the occupied islands, as the Congressman personally would have preferred, would not have been consistent with United States policies and commitments under the Atlantic Charter or the United

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16/ 93 Cong. Rec. 8733 (1947).

Nations Charter. The reference to the lack of a peace treaty with Japan also correctly acknowledges and underscores the fact that the United States acquired no claim of sovereignty over the islands by virtue of its post-war occupation.17/ In this light, the full authority over the islands which the United States would acquire under the Trusteeship Agreement presented a convenient and legitimate means of protecting our national security interests and enabling this country to assume effective control over the islands in a manner consistent with United States policy and international law. Article 15, of the proposed agreement, pursuant to which the terms of the agreement may not be altered or terminated without United States consent, seemed to ensure that the United States position in the islands would not change until we desired that it should.18/ No doubt other members of Congress also found these negotiated features of the strategic trusteeship arrangement attractive, and on July 18, 1947, Congress authorized approval of the agreement.

17/ Fleming v. Page, 50 U.S. (9 How.) 603, 614 (1850); Dooley v. U.S. 182 U.S. 222, 21 S Ct. 762, 45 L.Ed. 1074; U.S. v. Hackabee, Ala. 1873, 83 U.S. 414, 16 Wall. 414, 21 L.Ed. 457; 10 M. Whiteman, Digest of International Law, 547-548 (1968). Also see, Sec. Council Off. Rec. 113th Meeting, p. 413.

18/ In addition to United States ability to veto adverse Security Council action regarding the trusteeship, to which Mr. Mansfield alluded in his remarks, Article 15 of the Trusteeship Agreement states:

> "The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority."

Applicability of Territorial Clause - Other Bases of Congressional Authority Over Trusteeship Affairs

The preceding discussion suggests that from the outset the Trusteeship Agreement was interpreted ambiguously and implemented with a degree of political ambivalence. On one hand, the United States acknowledged that it did not acquire sovereignty over the islands and that the trust territory would not be politically or constitutionally integrated into the United States by virtue of the Trusteeship Agreement. On the other hand, the United States Representative to the Security Council stated clearly on the record of its proceeding that for the purpose of implementing article 3 of the Trusteeship Agreement "the United States intends to treat the trust territory as if it were an integral part of the United States."

The view of the United States that it had the authority to treat the trust territory as if it were an integral part of the United States is perhaps one factor which helped spawn the untenable proposition that Congressional authority over trusteeship affairs derives primarily from the territorial clause. The correct view, as discussed below in some detail, is that the power of Congress to legislate with respect to the trust territory flows from the terms of the Trusteeship Agreement and is an incident of Congressional authority to provide for the implementation of that agreement under Article 1, Section 8 of the Constitution -- the necessary and proper clause. However, it is not difficult to understand how ambiguity may have arisen in this respect. For in ascertaining the proper place to situate trusteeship affairs within our constitutional system it was clear that the trust territory could not be regarded as having the same constitutional status as one of the states. Thus, it was inevitable that this new political entity would be regarded as having a constitutional analogous to the other polities within our constitutional family which -- although not states -- are integral parts of the United States; i.e., the United States territories.19/ Since Congressional authority over territories flows from the territorial clause, it was natural enough to assume Congress would act with respect to the trust territory in the same constitutional context.

Though not literally or legally the "territory" or "property" of the United States within the meaning of the territorial clause, the trust territory was in many ways treated as such, and could not conveniently be treated otherwise administratively, as distinguished from legally, given the unique characteristics of United States constitutional federalism. Because trusteeship administration was unprecedented in this nation's constitutional history and practice with respect to territories, in performing its role as administering authority the government of the United States has tended to act with respect to the trust territory on the basis of the analogy to the territories. For example, the committees of Congress which exercise jurisdiction over the territories have been given responsibility for the trust territory, and over the years Congress has passed legislation

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19/ See part II infra for discussion of constitutional and legal status of trust territory as compared to that of the territories.

extending to the trust territory and its citizens many of the domestic programs and benefits provided to United States territories and possessions.20/ On the other hand, on numerous occasions United States Courts have ruled that the trust territory is a foreign area and not under United States sovereignty.21/ While issues regarding application of the United States Constitution and laws to the trust territory generally have been correctly decided by reference to terms of the Trusteeship Agreement, the courts also have occasionally, and with sometimes anomalous results, drawn certain analogies between the trust territory and other United States territories.22/ In construing the constitutionality of the Northern Mariana Islands Commonwealth Covenant, the United States law which provides for the transition of the Northern Mariana Islands from trusteeship status to that of an unincorporated U.S. territory, the courts have even applied the Insular Cases territorial clause analysis in a case dealing with

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20/ See, e.g., Public Law 97-110 (1981), 95 Stat. 1513, extending certain banking deposit insurance benefits; Public Law 92-318 (1972), 86 Stat. 350, as amended by Public Law 96-374 (1980), 94 Stat. 1501, extending land grant college aid. Numerous social assistance programs and services have also been extended to the trust territory.

21/ See, Callas v. U.S., 253 F. 2d 838 (2d Cir. 1958); cert. denied, 357 U.S. 936 (1958); Gale v. Andrus, 643 F. 2d 828-30 (D.C. Cir. 1980); Commonwealth of the Northern Mariana Islands v. Atalig, 723 F. 2d 682, 684 (9th Cir. 1984).

22/ See, e.g., In re Bowoon Sangsa Co., 720 F.2d 595, (9th Cir. 1983).

a part of the trust territory.23/ Finally, pursuant to Congressional authorization, Presidential Orders and Orders of the Secretary of the Interior, the policy-level responsibility within the United States Government for the fiscal and administrative affairs of the trust territory has generally reposed with the same officials within the Department of Interior who have had cognizance of territory affairs.24/

23/ See Atalig, supra note 20, upholding authority of Congress in enacting NMI Covenant to determine extent of application of Constitution to the NMI during the transition from trusteeship to territorial status upon trusteeship termination in accordance with Insular Cases; i.e., Downes v. Bidwell, 182 U.S. 244 (1901); Dooley, supra note 16; De Lima v. Bidwell, 182 U.S. 1 (1901); Balzac v. Porto Rico, 258 U.S. 298 (1922); Dorr v. U.S., 195 U.S. 138 (1904); Hawaii v. Mankichi, 190 U.S. 197 (1903). See, note 36, infra.

24/ At the time of approval of the Trusteeship Agreement on July 18, 1947, President Truman issued Executive Order 9875, which delegated responsibility for civil administration of the trust territory to the Secretary of the Navy. That interim arrangement ended on June 29, 1951, when the President issued Executive Order No. 10265, transferring civil administration to the Secretary of Interior. Arrangements for administration of the islands continued to be prescribed by Presidential order until June 30, 1954, when Congress enacted 48 U.S.C. 1681; 68 Stat. 330, authorizing continued administration in accordance with Presidential orders. By Executive Order No. 11021, effective July 1, 1962, President Kennedy provided for continued administration by the Secretary of Interior. Under a succession of Interior Secretarial Orders the administrative organization which became the Trust Territory Government was established. On April 25, 1979 the Secretary of the Interior issued Secretarial Order 3039, which provided for transfer of governmental functions to the democratically instituted constitutional governments of Palau, the Marshall Islands and the Federated States of Micronesia pending trusteeship termination. While the TTPI High Commissioner and the High Court continue to retain oversight authority under Secretarial Order 3039, most functions of government have been transferred to the constitutional governments. The legislative function in the TTPI reposed with the Congress of Micronesia from 1964 to 1979, and is now vested in the legislatures of Palau, the Marshall Islands and the Federated States of Micronesia under their constitutions.

It has been neither illogical nor inconsistent with the Trusteeship Agreement for the United States, in its constitutional process for implementing that agreement, to administer the trust territory in a manner similar to the way it administers United States territories. This has been appropriate because it is consistent with and takes advantage of our government's experience dealing with off-shore, non-State areas. However, in concluding the Trusteeship Agreement United States negotiators ensured that Congress would not be required to rely upon theoretical postulations about the application of the territorial clause in order to fulfill its institutional responsibility and exercise constitutional authority with respect to the trust territory. For in addition to the full authority of the United States under article 3 to make its laws applicable to the trust territory -- which in general requires Congressional action -- the Trusteeship Agreement itself provides in article 12 that:

> "The administering authority shall enact such legislation as may be necessary to place the provisions of this agreement in effect in the trust territory."25/

Inclusion of such a provision in an agreement to be submitted to Congress and approved as a Congressional-Executive agreement certainly suggests, as stated in the House Report on the resolution authorizing approval of the agreement, that the Executive branch recognized that "both Houses of Congress will be

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25/ U.S. T.I.A.S 1665; 61 Stat. 3301, 3304; 8 U.N.T.S. 189, 198. The comment accompanying this provision in the U.S. draft agreement stated that: "This article constitutes an international commitment upon the part of the United States to implement by legislation the provisions of the trusteeship agreement."

concerned in the future with legislation necessary for the governing of the trust territory."26/

The authority of Congress over trusteeship affairs, and more specifically the authority to treat the trust territory in the same manner as the territories in some respects, is further established by article 9 of the Trusteeship Agreement:

> "The administering authority shall be entitled to constitute the trust territory into a customs, fiscal, or administrative union or federation with other territories under United States jurisdiction and to establish common services between such territories and the trust territory where such measures are not inconsistent with the basic objectives of the International Trusteeship System and with the terms of this agreement."27/

Congress has not authorized treatment of the trust territory as other than a foreign territory for purposes of United States customs, and has never created any organic union between the trust territory and other United States jurisdictions over which this country exercises sovereignty; though legislation which would have done so has been considered.28/ Nevertheless, commentary accompanying the United States draft Trusteeship Agreement makes it clear that article 9, like article 3, contemplates that Congress will play its full constitutional role in implementing the provisions of the Trusteeship Agreement.29/

26/ H.R. Rep. No. 889, 80th Cong., 1st Sess. (1947), reprinted in 1947 U.S. Code Cong. & Ad. News 1317.

27/ U.S. T.I.A.S. 1665; 61 Stat. 3301, 3302; 8 U.N.T.S. 189, 196

28/ See, e.g., S 2992, 82d Cong. 2d Sess., "The Organic Act of the Trust Territory of the Pacific Islands."

29/ Draft Trusteeship Agreement for the Japanese Mandated Islands, op. cit., pp. 9-10; U.S. Delegation Doc. US/S/119, p.6.

Finally, implementation of the trusteeship has required regular appropriations and numerous special legislative actions without which the Executive branch could not have efficiently and effectively administered the trusteeship. Clearly, both under the terms of the Trusteeship Agreement and through the express and implied powers of Congress which must be exercised in connection with its implementation -- including the necessary and proper clause of article I, section 8 -- the authority for and requirement of Congressional action regulating trusteeship affairs is broadly based.

For these reasons, and in view of the unique constitutional nature of the trusteeship as discussed above, there seems to be little purpose to be served by attributing congressional authority over trusteeship affairs to the territorial clause.30/ Even less desirable would be to construct a theoretical constitutional

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30/ The Supreme Court has held that the territorial clause applies as an incident of acquisition by the United States of the territory involved. U.S. v. Kagama, Cal. 1886, 6 S.Ct. 1109, 118 U.S. 380, 30 L.Ed. 228; Sere v. Pitot, 1810, 10 U.S. 332, 6 Cranch 332, 3 L.Ed. 240; DeLima v. Bidwell, supra note 22. Arguably, since the United States did not acquire or annex the islands of the trust territory the Trusteeship Agreement must be viewed as an international agreement enacted into law by Congress under the necessary and proper clause (Article I, Section 8) of the Constitution, rather than the territorial clause. While the Supreme Court, in 1948, did state that the territorial clause does not necessarily depend upon an assertion of sovereignty, Vermilya-Brown v. Connell, 335 U.S. 377, 381 (1948), that case involved enforcement of wage and hour protections for personnel on a U.S. base overseas, and the reference to sovereignty was apparently made in the narrow context of the facts in that case and was not attributed to any established line of cases addressing this issue. Thus, the Vermilya-Brown case seems to stand only for the proposition that where the United States by lease or international agreement acquires the right to take possession of and use an area in another country there arises a dichotomy between congressional authority and that of the President with regard to trusteeship affairs, most particularly in matters involving future political status and trusteeship termination. Rather, as stated at the outset of this discussion, Congress and the President should proceed with administration and termination of the trusteeship in accordance with their respective institutional responsibilities and the approach which has been established through almost four decades of constitutional practice relating to the trusteeship.

Thus, just as the President's representatives negotiated the terms for creation and administration of the trusteeship, it is correct for the President's representatives to negotiate the terms which will provide the basis for its termination.31/ In both

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30/(cont.) property interest subject to Congressional authority under the territorial clause. No one would suggest that the authority and responsibility of the United States under the Trusteeship Agreement is limited to the narrow type of property rights which the Court in Vermilya-Brown relied upon in concluding--over a vigorous dissent in this 5-4 decision--that an American base in Bermuda was a "possession" of the United States within the meaning of the statute being construed. If applicable at all to the trust territory, Vermilya-Brown would seem only to provide a basis for determining the applicability of a specific statute in question to a U.S. base in the trust territory, and certainly should not be cited for purposes of determining the constitutional and legal status of the trust territory.

31/ Four Presidents have appointed personal representatives for Micronesian status negotiations, each of whom has held the rank of Ambassador. President Nixon's representative was Franklin Haydn Williams, who served from 1971 to 1976. Philip W. Manhard served as President Ford's acting representative from 1976 until President Carter appointed Peter R. Rosenblatt to the post in 1977. In 1981 President Reagan appointed Fred M. Zeder II to be his personal representative for the negotiations. Presidents Carter and Reagan made their appointments to this post with the advice and consent of the Senate.

cases, the negotiating process involves United States international relations with the United Nations and the peoples of the islands. The fact that the sequence of negotiations and procedure leading to termination of the trusteeship is the reverse of that leading to its creation (in that agreement and approval of the peoples concerned is a prerequisite for Congressional approval and termination of the agreement with the United Nations) demonstrates that the United States has faithfully and successfully fulfilled its obligations under the trusteeship to promote self-determination for the peoples of the trust territory. Just as Congress in 1947 authorized the President to approve the Trusteeship Agreement which his representatives had negotiated, the President is now asking Congress to approve the political status arrangements which have been negotiated and thereby provide the bases for termination of the Trusteeship Agreement.32/

II. CONSTITUTIONAL IMPLICATIONS OF THE COMPACT OF FREE ASSOCIATION IN THE CONTEXT OF FEDERAL-TERRITORIAL RELATIONS

The Reagan Administration's effort to obtain Congressional approval of the Compact of Free Association comes at a time when the existing legal and administrative regime for governance of United States territories is the subject of a Congressional policy review.33/ Territorial leaders, members of Congress and

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32/ See, Letter from President Reagan to Congress, supra note 1

33/ See, Letter to Charles A. Bowsher, Comptroller General of the United States, from Senator James A. McClure, Chairman of the Committee on Energy and Natural Resources, United States Senate, (March 25, 1983), requesting the General Accounting Office to "undertake a study of United States policy for the territories and the insular areas under its administration." That study is currently being conducted by the National Security and International Affairs Division of the GAO.

commentators are discussing proposals for reorganization of the federal-territorial relationship.34/ It is in this context that numerous questions have arisen regarding the constitutional nature of the free association relationship as defined in the Compact, and the impact which its establishment may have upon the legal and constitutional status of United States territories.35/

The preceding discussion of the legal nature and effect of the Trusteeship Agreement provides the basis for making important constitutional distinctions between the legal status of the trust territory and that of the United States territories.36/ Under the Compact of Free Association the most basic of these distinctions will continue to be valid as between the territories and the freely associated states, and a thorough understanding of them may be useful in assessing the impact, if any which the Compact may have upon relations between the federal government and the territories.

34/ See, Letter from Representatives Morris Udall and Manuel Lujan, Jr., Chairman and Ranking Republican Member, respectively, House Committee on Interior and Insular Affairs, to Antonio B. Won Pat, Delegate to Congress from Guam, (October 20, 1983), regarding H. Con. Res. 131, calling for President and Governor of Guam to appoint negotiators to discuss future of federal-territorial relations; also, Leibowitz, United States Federalism: States and Territories, 28 Am. U.L. Rev. 449 (1979).

35/ See, statements of Delgate to Congress from the Virgin Islands, Ron de Lugo, supra note 2.

36/ References in this discussion to the United States territories generally are to the off-shore territories of Guam, Puerto Rico, Virgin Islands, American Samoa and a number of smaller possessions. Under the Covenant to establish the Commonwealth of the Northern Mariana Islands, supra, note 3 at Sec. 101, the islands of which that component of the trust territory is comprised will become a territory upon termination of the trusteeship.

Prior to assumption by the United States of its responsibilities as administering authority under the Trusteeship Agreement, United States constitutional practice with respect to territory other than states was limited to the exercise of jurisdiction over two basic types of territories. The first type was that of dependencies undergoing the transition to statehood. During this nation's continental expansion these territories were generally governed and incorporated into the United States in accordance with procedures developed under the Northwest Ordinance of 1787.37/ The other type of territory familiar in United States constitutional practice is that of the off-shore territories which the United States has annexed by treaty or purchase beginning at the end of the last century, and which it has not "incorporated into the United States", i.e., to which it has not expressly extended the provisions of the United States Constitution. In the Insular Cases, the Supreme Court has defined the constitutional status of the territories as that of "unincorporated territories" under United States sovereignty.38/ The process leading to the acquisition of each of these two types of territories usually involved some action or initiative by the President under the military or foreign affairs powers.39/ However, acts of Congress under the territorial clause have been required to effect constitutionally the transition of territory

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37/ Northwest Territory Ordinance of 1787, Art. V, appears in Act of August 7, 1789, 1 Stat. 50.

38/ Supra, at note 23.

39/ U.S. Const. Art. II, Sec. 2.

from the status of a foreign area to statehood,40/ or, in the case of the off-shore territories, to enact measures providing for their governance.41/

Establishment of the Trust Territory of the Pacific Islands under the terms of the Trusteeship Agreement created an entirely new type of political entity to be governed in accordance with our constitutional processes. For in contrast to the circumstances which have obtained with respect to areas undergoing the transition to the constitutional status of statehood or that of the unincorporated territories, the agreement under which the United States acquired control of the trust territory did not contemplate that the area would become subject to United States sovereignty by operation of its provisions alone,42/ or in connection with United States constitutional measures for its

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40/ See, Texas v. White, Wall 700 (U.S. 1868).

41/ Constitution of the Commonwealth of Puerto Rico, 48 U.S.C. Sec. 731d (1950); Revised Organic Act of the Virgin Islands, 48 U.S.C. 1541 et seq. (1954); Organic Act of Guam, 48 U.S.C. Sec. 1421 (1976). American Samoa is an unorganized unincorporated territory which is governed as directed by the President pursuant to 48 U.S.C. 1661(c). Under Exec. Order No. 10264, June 29, 1951, the President assigned responsibility for administration of American Samoa to the Secretary of the Interior (see, 16 FR 6419). The executive, legislative and judicial functions of government are provided for under Secretary of the Interior Order No. 3009, dated June 27, 1978.

42/ See, e.g.,Treaty of Paris, Dec. 10, 1898, United States-Spain, 30 Stat. 1754, T.S. No. 343.

approval and implementation.43/ Rather, in entering into the Trusteeship Agreement the United States agreed to exercise its rights and authority in a manner consistent with the terms of the agreement and the right of the peoples of the area placed under United States administration to full political self-determination.44/ Thus, United States ability under the Trusteeship Agreement to exercise governmental authority on behalf of the peoples of the trust territory must be viewed as arising not from integration of the trust territory into our constitutional system as has been done in the case of the territories, but rather as an incident of United States responsibility and authority under the unique and constitutionally unprecedented terms of the Trusteeship Agreement.

Like the Trusteeship Agreement as it now applies to the trust territory, the Compact will not integrate the freely associated states into the United States constitutional system in the same sense that the territories have been incorporated into the federal process for the exercise of this nation's sovereignty. To the contrary, under the Compact the United States will no longer have the full authority for governmental affairs it has under the trusteeship, and will not have the jurisdiction

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43/ _See_, Constitution of the Commonwealth of Puerto Rico, _Id_., providing for Congressional approval of constitution of Puerto Rico under terms consistent with the United States constitution; also, Northern Mariana Islands Commonwealth Covenant, _supra_ note 3 at Sec. 101, providing for extension of United States sovereignty to the Commonwealth upon approval and full implementation of the agreement.

44/ Trusteeship Agreement, _supra_ note 4 at Article 6.

and legislative power it has now except where specifically provided by the Compact. The Compact will enable the United States to continue to exercise a precisely delimited degree of governmental authority on behalf of the peoples concerned, who will have and exercise their sovereignty through their constitutional governments. In this context, it is interesting to note that there are two fundamental differences between the Trusteeship Agreement and the Compact. First, the Trusteeship Agreement is between the United States and the Security Council and provides for United Nations functions in relation to administration of the trusteeship, while the Compact--which will provide the basis for terminating the United Nations role--is directly between the United States and the peoples of the islands exercising their sovereignty through their constitutional governments.45/ Secondly, the Trusteeship Agreement can be terminated only with the agreement of the United States, while the Compact can be terminated in accordance with terms mutually agreed upon and set forth in the provisions of the Compact and its related agreements.46/ However, United States authority to prevent any threat to international peace and security in the Micronesian region will be preserved under the Compact and can be terminated only by mutual agreement of the United States and the Freely Associated States. Thus, underlying the very differences just described there is a fundamental similarity between the

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45/ Compact of Free Association, supra note 1 at Section 111.

46/ Id., at Section 441, et seq.

Trusteeship Agreement and the Compact in that the overall security and defense authority of the United States established under the trusteeship will continue after trusteeship termination in accordance with the terms of the Compact, and can not be terminated without the agreement of the United States.47/

The political status of the trust territory and--prospectively--the freely associated states, as described above, is obviously distinct from that of our territories as a matter of constitutional and international law. Very simply, the territories are under United States sovereignty.48/ The off-shore territories are American soil and their peoples are United States citizens or nationals. Though the status of some of the United States territories regularly receives comment in the context of United Nations decolonialization proceedings, political developments in the off-shore possessions indicate no support for any move to "internationalize" political status issues in the territories. Indeed, territorial leaders seem to be operating under

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47/ See, Id., at Section 462 for list of related agreements which, inter alia, provide for long term United States authority and responsibility for regional security and defense, including specific military operating rights, as well as United States authority to deny to the armed forces of third countries access to the freely associated states. Under the provisions of the Compact these security and defense arrangements would survive termination of free association and remain in effect in accordance with the terms of the related agreements. United States authority to deny third country access for military purposes can not be terminated without United States agreement.

48/ See, supra note 42.

a popular mandate to keep federal-territorial relations "in the family."49/

Those concerned with the potential impact of the Compact upon the territories must recognize that because of the controlling nature of the political and legal distinctions described above the political status arrangements which the United States makes with the peoples of the trust territory do not create a precise or binding constitutional precedent which must be followed in federal relations with the territories. Arguably, the fundamental constitutional distinctions between the territories and both the trust territory and what will be the freely associated states provide the basis for separation of policy and practice in United States legal relations with the territories on one hand and the trust territory and its freely associated state successors on the other.

However, Congress' current policy review with respect to the territories and the Compact of Free Association must also be recognized as an historic opportunity to weave into whole cloth the somewhat disparate strands of United States policy and law applicable to the different types of territories and political entities having a legal governmental relationship to our federal government. The history of this nation's constitutional practice

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49/ See, e.g., UN Chronicle, Vol. XXI, No. 1, January 1984, Report of Fourth Committee (Decolonization), pp. 61-64, noting that 75 percent of the Guamanian people voting in a 1983 political status referendum voted for continued status as a United States territory. Also, see, Crawford, infra note 61 at 371-372, regarding UN recognition of Puerto Rico's political status as a United States territory.

with respect to territories is one of adaptation to changed circumstances.50/ The political coming of age of the peoples of the trust territory and redefined aspirations of the peoples of the territories require that we once again sort out our relations with the different types of non-state polities in the United States political family and translate the distinctions which exist between them into viable legal and constitutional relationships.

Congressional consideration of the Compact and the state of federal-territorial relations provides us with the opportunity to clarify the precise legal nature of relations between the territories, the trust territory or its successors and the federal government, and on that basis formulate programs and policies appropriate to the status of these various political entities and their separate and common interests. For example, the freely associated states will enjoy many benefits of association with the United States which until now only the territories have received, while other aspects of the relationship between the United States and the territories will not be compatible with the

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50/ The Records of the Federal Convention of 1787 (M. Farrand ed. 1937) reflect that the territorial clause as finally included in the Constitution was intended to prevent disputes between the states or between the states and the federal government over disposition of the Western territories. The Insular Cases, supra note 23, demonstrate that constitutional practice regarding territories is evolutionary as the United States establishes relations with new types of territories. As discussed in Part I, supra, the history of the Trusteeship Agreement demonstrates that the President and Congress are able to respond in a creative manner to unprecedented foreign affairs policy requirements such as those posed by United States interests following World War II in administering islands not under this nation's sovereignty.

political status of free association. While certain features of free association may seem attrative to the territories, the Covenant establishing the NMI Commonwealth clearly represents a more appropriate model than the Compact for reorganizing or improving legal and political relations between the territories and the federal government.51/ However, no attempt can be made here to resolve the policy issues which Congress must consider in this context. Rather, the purpose of this discussion has been to describe the constitutional framework in which these issues arise.

III. INTERNATIONAL LEGAL ASPECTS OF FREE ASSOCIATION AS DEFINED IN THE MICRONESIAN COMPACT

In addition to being unprecedented in United States constitutional practice, the free association relationship defined in the Compact is unique in international practice as well. The following discussion attempts to respond to some of the questions raised during the Congressional approval process with regard to the international legal aspects of free association.

Free association is an internationally recognized political status available to the peoples of non-self-governing territories as a basis for termination of their non-self-governing status.52/ The Compact of Free Association will establish a political rela-

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51/ The NMI Commonwealth Covenant, at Section 105 and 904, represents a creative and innovative approach to the issues of federal supremacy, international affairs and organic legislation which have been sources of friction in federal-territorial relations. New approaches to immigration and taxation issues are also possible.

52/ G.A. Res., 2625, 25 U.N. GAOR Supp. (No. 28) 121 U.N. Doc. A/8028 (1970); G.A. Res. 1541, 15 U.N. GAOR Supp. (No. 16) 29, U.N. Doc. A/4684 (1960).

tionship between the United States and the freely associated states which will constitute a valid basis for international recognition that the Federated States of Micronesia and the Marshall Islands have entered into the political status of free association with the United States.

Three basic political status options are internationally recognized as valid bases for termination of non-self-governing status: emergence as an independent state, incorporation into an independent state, or free association with an independent state. The principles and requirements associated with these three avenues for termination of non-self-governing status have been established through the international practice of states with respect to non-self-governing territories, including the UN General Assembly's adoption of resolutions addressing these matters.53/ Of those resolutions, perhaps the most authoritative in the present context is Resolution 2625 (XXV) of October 24, 1970, the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, which specifically recognizes free association as one of the legitimate political statuses available to non-self-governing territories. While measures of the General Assembly are not directly applicable to a trust territory designated as "strategic" under Article 82 of the UN Charter, the distinctions which must be

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53/ Id. Also, see, G.A. Res. 1514, 15 GAOR, Supp. (No. 16) 66, U.N. Doc. A/4684 (1960); G.A. Res. 742, 8 U.N. GAOR, Supp. (No.17) 21, U.N. Doc. A/2630 (1953).

drawn between the strategic trusteeship and other trusteeships and non-self-governing territories relate primarily to the allocation of functions regarding such territories as between the General Assembly and the Security Council, and do not run to the forms of self-government available to their peoples.54/ Consequently, there is no reason to doubt the relevance of Resolution 2625 in discussing the future political status process in the Trust Territory of the Pacific Islands, even though it is the only strategic trusteeship. Accordingly, the three political status options recognized as being available to non-self-governing territories generally must be viewed as forms of self-government available to the peoples of the Pacific islands trusteeship.

The Compact of Free Association was negotiated within the framework of the Hilo Principles,55/ which define a valid basis for the United States and the peoples of the trust territory to

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54/ Chapter XI and Article 85 of Chapter XII of the UN Charter enable the General Assembly to take cognizance of matters relating to both non-self-governing dependent territories which were not placed under trusteeship and the ten trust territories established under Chapter XII but not designated as strategic under Article 82 of the Charter. Chapter XII, Article 83, of the UN Charter designates the Security Council as the body which exercises the functions of the United Nations relating to trusteeships designated as strategic. In accordance with Article 83 of the UN Charter and S.C. Res. 70, 4 U.N. SCOR (415th mtg.) 12, U.N. Doc. s/inf/3 Rev. 1 (1949), the Security Council has been assisted in performing its functions relating to the strategic trusteeship by the UN Trusteeship Council.

55/ Statement of Agreed Principles for Free Association, signed by the United States and Representatives of the peoples of the Trust Territory, April 9, 1978, at Hilo, Hawaii.

enter into the relationship of free association.56/ The Compact represents mutual agreement between the United States and the constitutional governments of the FSM and the Marshall Islands as to the specific terms of free association.57/ Approval of the Compact by the peoples concerned in UN-observed plebiscites provides the basis for international recognition of the free association relationship defined in the Compact as a valid political status for the FSM and the Marshall Islands upon termination of the trusteeship.58/ For in instituting self-government for the peoples of the trust territory and terminating the trusteeship in favor of a new political status the controlling principle under international law is that the form of self-government and political status established be in accordance with the freely expressed wishes of the peoples concerned.59/

56/ See, Armstrong, The Emergence of the Micronesians into the International Community: A Study of the Creation of a New International Entity, 5 BROOKLYN J. INT'L L. 207, 226-227,260-261 (1979).

57/ Compact of Free Association, supra note 1 at Article VII, Title Four.

58/ The Compact was approved by the people of the FSM by 78 percent on June 21, 1983, and by the people of the Marshall Islands by 58 percent on September 7, 1983. The Compact was approved by the governments of the FSM and the Marshall Islands in accordance with their constitutions on September 2nd and 20th, respectively, 1983.

59/ This principle was expressed in the Atlantic Charter, supra note 6, and was fundamental in formulation of the provisions of the UN Charter establishing the trusteeship system (Chapter XII, Article 76). See, 1 Whiteman, Digest of International Law, 731-745 (1968). Also, see, G.A. Res. 1514, supra note 53, which by its language applies to trust territories but must--in light of Article 83 of the Charter--be read as inapplicable to the strategic trusteeship. Nevertheless, even in the context of this

For purposes of discussion and analysis it may be instructive to measure the Compact against the theoretical standards which have been suggested by legal scholars examining in the abstract free association as a political status. For example, Professor Crawford60/ has recommended that the following criteria be applied in determining the legitimacy of a free association relationship:

(1) The association must be freely chosen by the peoples of the territory.

(2) The terms of association must be clearly and fully set forth, in a form binding on the parties.

(3) The associated territory must have substantial powers of internal self-government.

(4) The reserved powers of the metropolitan state (which will usually be those of foreign affairs and defense) should not involve substantial discretions to intervene in the internal affairs of the associated state.

(5) There must be a procedure for termination of the association which should be as accessible to the associated state as to the government of the metropolitan state and which can be

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59/(cont.) strongly-worded resolution calling for acceleration of the process for termination of the non-self-governing status of dependent and trust territories, recognition is given to the principle that this goal must be accomplished "in accordance with the freely expressed will and desire" of the peoples concerned.

60/ Dr. James Crawford, Barrister and Solicitor of the High Court of Australia, Senior Lecturer in Law, University of Adelaide.

viewed as a continued expression of the right of the peoples concerned to self-determination.61/

Without necessarily adopting these broadly-stated principles, taking them in order it is interesting to note that the Compact of Free Association effectively satisfies each of these suggested criteria:

(1) By its own terms the Compact can not come into effect until, inter alia, it has been approved by the peoples concerned.62/ This requirement has already been satisfied.63/

(2) The terms of the free association relationship defined in the Compact are set forth in clear statements of controlling principles and detailed treatment is given to every foreseeable facet of the relationship.

(3) The freely associated states will be fully self-governing under their constitutions. The United States will retain no direct authority over their internal affairs except where security and defense matters are involved.64/ In addition to full internal self-government, under the Compact the freely asso-

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61/ Crawford, The Creation of States in International Law, 376 (1979).

62/ Compact of Free Association, supra note 1 at Sec. 411.

63/ Supra note 58.

64/ Compact of Free Association, supra note 1 at Sections 111, 311 and 352.

ciated states will have authority over their foreign affairs. This authority is to be exercised on the basis of government-to-government consultation and cooperation, but the separate authority and responsibility of the freely associated states in this area is clearly established.65/

Under the Compact the freely associated states will arguably exercise greater authority over their internal affairs, particularly as affected by foreign affairs matters, than, for example, the Cook Islands. The significance of this comparison lies in the fact that the Cook Islands is a freely associated state recognized as internally self-governing by the international community.66/ Under the Cook Islands free association arrangement with New Zealand the latter retains authority and responsibility for defense and external affairs. Consequently, in theory Cook Islands authority is limited to control of internal affairs which involve neither defense nor external affairs issues. In light of the interrelationships between internal and external affairs in such areas as trade and economic development, it would seem that the Cook Islands is, at least in principle, foreclosed from actions in many areas where internal and external affairs overlap. In contrast, under the Compact both internal and external

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65/ Id. at Sections 121-127.

66/ G.A. Res. 2064, 20 U.N. GAOR, Supp. (No. 14) 56-57, U.N. Doc. A/6014 (1965). A similar free association relationship between New Zealand and Niue was also approved by the General Assembly, G.A. Res. 3285, 29 U.N. GAOR, Supp. (No. 31) 98, U.N. Doc. A/9631 (1974).

affairs will be within the scope of freely associated state authority under the Compact, except where defense interests are directly involved. (See discussion of point 4, below). Since the Cook Islands is internationally recognized as having achieved "full internal self-government" in free association with New Zealand,67/ it would seem that the same result would necessarily obtain with respect to the freely associated states under the Compact.

(4) To ensure that the separate authority and responsibility of the United States and the freely associated states under the Compact can be exercised in a compatible manner, the freely associated states agree to refrain from actions which the United States determines, after consultations with the government concerned, to be incompatible with United States authority and responsibility for defense matters.68/ This mechanism provides the most narrowly drawn procedure possible given the full authority and responsibility of the United States under the Compact for security and defense matters in the freely associated states.

This procedure appears to grant to the United States a lesser degree of discretion to intervene in the freely associated states than has been established under the Cook Islands association with New Zealand. For in the case of the Cook Islands, the Queen is the Head of State in right of New Zealand. Executive authority is vested in her and exercised through the Prime

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67/ Id. at G.A. Res. 2064.

68/ Compact of Free Association, supra note 1 at Sec. 313.

Minister of New Zealand with the advice of a local council. In the exercise of external affairs and defense authority the Prime Minister of New Zealand consults with the Premier of the Cook Islands. In contrast, under the Compact the executive authority of the freely associated state governments, including the foreign affairs authority, is vested in the chief executive of the constitutional government, and exercised by such official in the name of the freely associated state in its own right. Because the freely associated states will have autonomy and authority in areas that are beyond the authority of the Cook Islands, the freely associated states will be engaging in activities on an international plane--as well as internally--in areas which could bring their actions into conflict with United States security and defense functions. In view of the foreign affairs authority which the freely associated states will have a requirement arises for a procedure through which a final and binding determination of prevailing authority can be made. Because of the historical factors underlying the United States decision to place the islands under a strategic trusteeship on the terms set forth in the Trusteeship Agreement--factors which properly affect the terms under which the United States would be prepared to terminate that agreement--it was agreed in the Compact that the authority and responsibility of the United States should prevail where an action of an associated state would have an impact upon and be inconsistent with security and defense interests.69/

69/ _See_, Bunche, _supra_ note 9 at pp. 1037, 1043.

(5) Approval of the Compact's prescribed termination procedures in the 1983 plebiscites and provisions under which the freely associated states may unilaterally terminate the relationship after an internal plebiscite on the issue clearly satisfy the requirement that termination be available to the associated states and that the procedure employed should preserve the people's right to self-determination.70/

IV. CONCLUSION

The Compact of Free Association which the President has asked Congress to approve will provide an internationally legitimate and constitutionally appropriate basis for terminating the Trusteehip Agreement and establishing a new political relationship with the peoples of the Marshall Islands and the Federated States of Micronesia in the post-trusteeship period. The Compact was negotiated by the President's representatives and submitted to Congress in accordance with constitutional procedures with respect to Congressional-Executive agreements which have been recognized by Congress for over a century. The Compact will establish a new type of polity in the context of United States constitutional practice relating to off-shore areas in which this nation has governmental authority and responsibility. However, the distinctions which will exist between the freely associated states and territories under United States sovereignty will

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70/ Compact of Free Association, supra note 1 at Article IV, Title Four.

require Congress to distinquish between these two types of territories in enacting measures for the governance of the territories and maintaining the close relationship between the freely associated states and the United States which the Compact contemplates.

The relationship between the freely associated states and the United States will be defined by the Compact as an international agreement, and that relationship will not bring the freely associated states under United States sovereignty in the way the territories are. However, review of the Compact provides Congress with the opportunity to take an inventory with respect to legal relationships with the territories and perhaps to take new policy initiatives in light of proposals which have been made for reorganization of federal-territorial relations--some of them based on certain features of free association as defined in the Compact. In some cases the concepts underlying negotiated provisions of the Compact may be appropriate models for addressing the specific concerns of the territories. However, just as many of the benefits extended to the territories can not be extended to the freely associated states consistent with their new status, many of the provisions of the Compact relating to the exercise of freely associated state sovereignty are inherently inconsistent with and inapplicable to the status of the territories. This is not to say that Congress can not or should not seek creative solutions to legal and political dilemmas now faced by the territories, which in some cases arise from deficiencies in the existing legal regime for the governance of our territories.

Finally, the Compact defines a free association relationship which is consistent with international practice. Comparing the Compact's provisions to internationally recognized precedents such as the Cook Islands, it should be noted that with respect to the allocation of governmental authority between the metropolitan power and the associated state the Compact follows established practice by providing for retention of full defense authority by the United States. The Compact is unique in the context of international precedents in that it provides for associated state autonomy and authority in foreign affairs. While that separate authority is subject to the so-called "defense veto," the latter is logically and legally a prerequisite for United States recognition of freely associated state foreign affairs authority in the context of a free association relationship in which the metropolitan power retains full defense authority. Thus, it is expected that the free association relationship defined in the Compact will not only withstand the scrutiny of the international community, but will be recognized as a creative and enlightened approach to international association between independent states and emerging sovereign peoples.

INTERIM REPORT
ON THE
FSM NATIONAL PLAN REVISION PROCESS
(MAY 15, 1984)

I. INTRODUCTION

The National and State Governments of the Federated States of Micronesia are currently engaged in an intensive process of reviewing and finalizing a five-year national economic development plan and four five-year state economic development plans. The process, which begun in 1980, has involved considerable effort on the part of FSM national and state government leaders and officials as well as input from the Micronesian people and assistance from technical experts provided through the United States Government, the United Nations Development Program and other regional and international organizations.

These plans will be the first comprehensive development plans ever formulated by the leaders and people of the Federated States of Micronesia. They will encompass the first phase of a longer term program of orderly and planned development to achieve the FSM's preeminent goal of economic self-sufficiency.

The State plans will set forth each State's goals, policies, and strategies, including planned programs and projects, for the growth and development of their local economies and will lay the foundations for the effective and wise utilization of their limited financial, physical and human resources. Although to a large extent the national plan will be a synthesis of the state plans, it will also provide an overall guide for the nation's development as well as address matters of exclusive and concurrent national responsibility and indicate ways in which the national government will assist and complement state development programs. In addition to serving as a guide for the development efforts of the FSM governments, it is intended that the national plan serve as a guide for the FSM private sector and as a tool for securing assistance from international organizations and other countries and for attracting foreign investors.

Finally, but of no less importance, the national plan is intended to comply with the requirements of the Compact of Free Association executed by the Government of the Federated States of Micronesia and the Government of the United States in October 1982. In particular, the Compact requires that the Government of the Federated States of Micronesia submit to the Government of the United States, for concurrence, an official overall economic development plan to serve as a guide for the FSM's annual expenditure of U.S. financial assistance grants for capital infrastructure and public and private sector economic development projects. Faced with limited resources and many unique development constraints, it would be hard for the Federated States of Micronesia to progress towards its goal of economic self-reliance without technical and financial support from the outside world, especially the United States.

At the state level, the Yap State Government adopted a five-year development plan (1983-1987) on December 23, 1982. Development plans have also been formulated for Ponape State, Kosrae State, and Truk State and are currently being reviewed by their state legislatures.

At the national level, a preliminary draft national plan was prepared by the National Government Office of Planning and Statistics and circulated for review to the National Executive Branch, the Congress of the Federated States of Micronesia, and the State Governments in the Fall of 1982. Following several months of review and discussions, including review by a team of technical economic and planning specialists provided by the United Nations Development Program, it was determined that an additional short-term effort to make refinements and improvements in the draft national plan would be beneficial. To this end, the President and Congress of the Federated States of Micronesia created a National Plan Task Force composed of senior FSM leaders and officials to undertake this effort. The Task Force, with the assistance of a technical working group composed of in-house economic and planning experts as well as UNDP experts and a senior development planning specialist provided through the U.S. Department of the Interior, is now in the process of revising the preliminary draft national plan. As specified in Attachment A, the National Plan Task Force has adopted a rigorous schedule for finalizing the national plan. It is anticipated that the national plan will be completed and ready for review by the President and Congress of the Federated States of Micronesia by the end of August, 1984.

II. THE POLICY FRAMEWORK

The National Plan Task Force has fomulated a statement o national goals and identified the major policies and strategie necessary for the achievement of these goals. These statement are set forth below.

A. NATIONAL GOALS

The following policy objectives for the first national development plan encompass:

Self-Reliance

Create the conditions necessary for the achievement of a viable and progressively self-reliant economic system.

Equity

Ensure an equitable distribution of the benefits resulting from development both among the States and within the States.

Cooperation

Support the States' efforts in achieving their development objectives within their respective political and cultural traditions.

Integration

Achieve coordination and economic integration among the entities of the Federation while preserving and respecting the integrity of the individual States and of the National Government.

Economic

Achieve improved standards of living for all the people through the judicious allocation of the nation's resources, including the promotion of private sector development.

Human

Create conditions which will enable all the people to fulfill their individual potential and to participate freely in the nation's development.

Cultural

Promote our cultural heritage and traditional practices by their incorporation into the nation's development process.

Environment

Maintain a healthy and aesthetic natural environment in the use of our natural resources.

B. POLICIES AND STRATEGIES

The following policies and strategies, necessary for the achievement of national goals, will be implemented during the plan period through the programs and projects identified in the sectoral plans.

Production and Income

The national and state governments will achieve progress in redressing fundamental imbalances in the economy, such as the gap between consumption and domestic production levels by:

1) mobilizing the use of the nation's unused resources,
2) increasing investment in directly-productive activities,
3) upgrading the skills of the national work force, and
4) improving the local marketing and distribution systems;

and the gap between savings and investment by increasing savings and creating domestic investment opportunities for local savings through:

1) introducing new mechanisms for channeling local savings into productive investment, such as loan guarantee programs,

2) encouraging increased savings through national savings campaign and expansion of local credit unions,

3) expanding the capital funds and their availability through the Development Bank, and

4) reducing external flows of capital by inducing increased returns on local investment through consideration of viable loan subsidy schemes.

Public Finance: Capital Investment Programs

At the beginning of the plan period, the national and state governments will complete the establishment of institutions and procedures necessary for the efficient allocation of planned public investment funds.

Public revenues allocated to capital investment programs will be progressively increased during the plan period by:

1) reserving an increasing proportion of public funds for capital investment purposes,

2) selectively seeking foreign grant and concessionary funding for viable economic investment projects,

3) devising methods for eventually achieving surpluses on operations budgets for transfer to the development budgets, and

4) mobilizing potential private sector savings for public investment in economic development projects.

The proportion of total national investment will b balanced to reflect both social and economic needs by:

1) ensuring that charges on operations budgets create by social overhead capital investment are closel controlled, and

2) giving emphasis to those infrastructure investment projects which make the highest contribution to the economic sectors.

Development benefits from investments will be maximized by giving highest priority to projects with the greatest domestic income and employment effects.

Progressive expansion in the absorptive capacity of the economy will be achieved by:

1) strengthening the capacity of domestic construction and technical services, facilitating supplies of materials,

2) improving the nation's capability in research and development and

3) strengthening planning to identify feasible development, projects.

Public Finance: Expenditures and Revenues

The national and state governments will increase revenues during the plan period by:

1) improving efficiency in tax collection and overall tax administration,

2) improving the collection of service fees and reducing rates subsidies,

3) progressive expansion of the nation's tax base through development program investment, and

4) maintaining under continuous review tax sources and rates and to increase them when necessary.

The growth in operations expenditures will be contained by:

1) assuring proper maintenance and operation of facilities to preserve their efficiency,

2) continuous examination of the suitability and impacts of government employment laws, wage policies, and procedures,

3) organization of public enterprises so that they can be eventually privatized while the public interests are preserved,

4) upgrading the performance of public administration at all levels of government, undertaking administrative changes, and

5) investigation of ways to minimize costs of government purchases, including consideration of public tendering of procurement contracts.

Coordination will be established between the budgeting and planning processes in the preparation of the operations and development budgets by:

1) introducing procedures for the establishment of unitary budgets in the early phase of the plan, and

2) establishment of uniform financial accounting and reporting systems.

External Trade

The national and state governments will ensure that exports make an increasing contribution to national development by:

1) increasing output of export items,

2) diversifying of export through the introduction of new export products,

3) seeking the establishment of new export markets and preferential tariff arrangements, and

4) increasing the value added component of exports.

The substitution of local products for imported items will be promoted whenever viable viable, by:

1) improvements in internal marketing of domestically produced items,

2) increased production of commodities with a high level of domestic demand, and

3) directing government purchases towards substituting domestic products for imports.

Earnings from invisible exports will be increased by:

1) introducing coordinated programs for tourist expansion,

2) providing services for external trade, including transportation and agency services, and

3) seeking ways to encourage remittances from citizens working abroad.

Population, Employment, and Manpower Development

It is the policy of the Government to maintain and improve the means to permit individual and family development and to ensure availability of nutrition, health care, living space, education, and employment. In relation to population, this will be achieved by:

1) providing information and services to enable choice in the spacing of children, and in family size,

2) extending the provision of child and family health services throughout the communities, and

3) increasing public health education programs.

It is the policy of Government to create employment opportunities by:

1) expanding private sector employment through the establishment of small industry centers, low-interest loan programs, management training programs, and small business advisory services,

2) increasing income-producing opportunities in the traditional sector by promoting rural and outer island development programs,

3) permitting selective increases in government employment where justified through an expansion in development services, including via new public institutions, particularly those requiring middle and high-level manpower skills,

4) enhancing the attractiveness of private sector employment by encouraging the narrowing of the earnings differential between the public and private sector for similar occupations, and

5) improving acceptability by private employers of the nation's job-seekers by establishing occupational skills standards, initially for the major trades and occupations, and introducing an official trade testing and certification system.

It is the policy of the Government in respect to manpower development to:

1) meet skill shortages in trades and benchwork occupations by:

  a) providing for intensive training courses for already-employed workers to upgrade their skill levels,

  b) promoting earning differentials between relative levels of skill within individual occupations, thereby

  c) enhancing the status of trades and benchwork occupations, and

2) overcome shortages in middle and high-level occupations by arranging for appropriate education and training programs.

It is the policy of the Government to strengthen manpower planning by:

1) coordinating national and state governments' manpower programs,

2) developing an occupational information system for continuous manpower and employment planning, and

3) providing employment and manpower services through new institutions to include outreach, assessment, training, and placement.

Rural and Outer Island Development

In order to create equitable development throughout the nation, the Government will focus on the creation of employment and self-employment opportunities in the rural areas and outer islands by:

1) identifying economic activities that the people can pursue in agriculture and fisheries,

2) promoting traditional skills and crafts and providing marketing services,

3) providing support for projects which seek to increase food production for domestic consumption and for export, and

4) providing improved transportation and communications links between the administrative centers and other islands.

Economic development opportunities across all the States of the nation will be explored by:

1) identifying major economic development projects that will utilize land, minerals, and other natural resources, and

2) locating, wherever suitable, resort and recreational facilities that will cater to local needs and those of visitors.

Improvement in living conditions will be promoted by:

1) providing potable water, health and community services, including transportation, communications, and power supply where necessary,

2) supporting projects to increase food production.

During the plan period, a comprehensive rural and outer island development program will be established by cooperation among national and state governments.

C. MACROFRAMEWORK DEVELOPMENT

In relation to the foregoing goals, policies and strategies, a number of chapters making up the macroframework of the Plan are in preparation. Basic economic, financial, trade and manpower data are being assembled. In certain areas, reliable information is not available. Consequently surveys are being conducted, particularly for the collection of income and production data and as concerns imports as a basis for developing acceptable estimates of gross domestic product.

III. SECTORAL PROGRAMS

As previously noted, the FSM's overall economic development plan is a composite of the separate but related plans of the four states, in the formation of which it is the National Government's role to provide guidance and assistance. Attachment B presents in aggregated form the current estimate of capital allocations required in the 1985-1989 period to finance projects which make up the Plan. The table summarizes these allocations by major sector and sub-sector.

The following is a brief description of the content of the projects and programs making up the major sectors and sub-sectors:

A. Manpower Development

Development of the nation's human resources is considered one of the highest priorities in the years ahead. The Plan will include a range of programs and projects to implement the policies and strategies mentioned above. By means of adequate scholarship policies post-secondary education will be more directed towards the manpower requirements of the nation. Through trade testing and certification schemes the status of technical occupations will be enhanced. Training programs will be designed to improve the skills and motivation of public service employees. Initiatives will be taken to provide technical and management training and advice to private and government enterprises.

B. Marine Resources

The FSM has not yet been able to capitalize on its marine resources to significantly contribute to the development of its economy. It is one of the goals of the nation to increase employment earning opportunities in Marine Resources' related activities and to broaden the nation's economic base by creating a viable and internationally competitive commercial fishing industry.

The nation will use its geographical situation and financial credibility during the first five years of the Plan to attract foreign partners who will provide managerial, financial, administrative and marketing services to develop a medium sized, export oriented and shore based fisheries complex.

The integrated fisheries project will include (tuna) fishing operations, vessel support facilities, cold storage, fish handling and processing, and fish transportation and marketing. The operation planned in Truk and Ponape will be closely linked with the establishment of an arabushi factory, fish cannery, fish-meal production and marine railway.

Other projects include reef reseeding, sea cucumber production, seaweed farming and "high quality" fish export by air.

Fish processing and handling systems appropriate to the technical skills and support available in the Outer Islands will be promoted. This means for example, the introduction of improved drying and smoking facilities.

Artisanal fisheries will be upgraded by providing the necessary facilities, training and other promotional support to local fishermen and cooperatives in such areas as fishing diversification, fish distribution services, foreign marketing of high value marine products and business management and marketing.

C. Agriculture

Development constraints in agriculture include the subsistence orientation of many farmers, which insulates them from market forces and makes them less responsive to market incentives and demands; deficiencies in the transport and marketing system; weathered soils; pattern of landholding with a large number of widely scattered small-scale plots; and lack of financial and technical assistance to farmers.

Planned remedies include the creation of a produce marketing corporation (PMC) to increase the commercialization of local products. The PMC will purchase products directly from farmers in outlying municipalities and islands.

Another program calls for the establishment of an agricultural production service which will directly produce agricultural products on land contributed by villages or the Public Land Authority in Ponape. It will also harvest, process and market these products.

Other proposals include the establishment of a livestock improvement program; a program to rehabilitate coconut plantations and to establish new plantations using high yielding varieties; the setting up of an agriculture revolving fund to sell inputs to farmers at landed cost; and a commercial feed demonstration farm.

D. Forestry

The Forestry sector has a promising potential, in both Ponape and Kosrae. The major development constraints include a lack of integration between forestry, logging and milling. There are no regular loggers, hence saw-milling activities are hampered by irregularity of log supply. Moreover, local production is unfinished and often too short. This sector suffers also from a lack of information on forestry resources.

Planned projects include a forest products consumption and market survey; soil survey; zoning; a logging operation and distribution program with the setting-up of a group of professional loggers; sylviculture research; a nursery and distribution program; and several conservation and resources management programs.

E. Industry

There is presently very little manufacturing in the FSM. The major constraints to development are the shortage of technical skills; undependable supply of raw materials, spare parts and local labor; lack of training opportunities; and a lack of management skills which arises from the absence of a tradition of entrepreneural activities.

During the plan period, a network of productive activities will be created by using the planned fishery joint-venture in Truk and Ponape to begin fish processing activities, mainly for exports. The private sector will be assisted in spreading into related fields of activities stimulated by the planned activities of fishing boats: establishment of a fishing gear manufacturing plant and a repair shop, construction of a boat repair dock, establishment of a fishmeal plant.

In the four states, projects have been identified to develop small-scale industries to process agriculture, forestry and marine products, to develop viable substitutes for some existing imports, to create an export-capability and to supply inputs for the productive and construction sectors.

Small Business Advisory Services will assist and stimulate the establishment and development of profitable small businesses.

The creation of small industrial parks will bridge the gap between skills acquisition and putting such skills into self-employment. The activities initiated by the small industrial parks will include food processing, charcoal making, handicraft manufacturing, stationery manufacturing and service industries.

Once these activities have proven viable, apprentices will be trained. The number of apprentices trained will depend on the need for the skills in the nation. At the end of the formal training period, concessionary loans will be made available to trainees to purchase equipment to operate their businesses.

F. Tourism

Tourism is presently the single largest foreign exchange earner, despite the fact that very little effort has been made to support the local tourism industry. Capital investments in hotels - mostly from the private sector - are substantial but only partially used. Little is being done to increase the quality of the services offered to tourists; water and electricity are often unavailable even in the best hotels. Amenities and recreational facilities are lacking, and visitors who come to the FSM attracted by the famous beauty of the islands, and their underwater and historical attractions, often have little to do after only a few days in the islands.

The National and State Five-Year Development Plans propose to resolve these shortcomings and expand the revenue that the nation derives from its tourist industry through the more efficient use of capital resources already invested in tourism and through a more intensive exploitation of the tourism flow already established for the FSM. Through various promotion programs and improvement of the quality of available services, it is expected that this flow will increase substantially during the plan period.

G. Health Services

Programs and projects in health services are to be especially focussed on the extension of primary health care services (on the one hand) and the upgrading and improvement of the management of hospital facilities and patient calls. By means of health education, upgrading of dispensaries and extension services, the current high incidence of chronic respiratory and environmentally related diseases is expected to diminish considerably during the plan period. Improvement of management of hospital facilities-highly necessary to provide quality services and to prevent detoriation of current facilities-will be achieved through training of staff, improvement of procurement policies, maintenance programs and organization.

H. Education

During the first Plan period a major effort be made to direct the educational system to the development needs of the nation. This will require greater emphasis on technical areas at all levels. Capital allocations including facilities, instruction materials and specific projects to support this strategy. It is also intended to bring the educational system closer to the communities it serves. Adult education programs will be featured and steps taken to foster and encourage community-wide involvement in education.

I. Youth and Community Development

Young school and College leavers have long experienced difficulty in finding employment and the problem is rapidly approaching alarming proportions. To alleviate this problem, curricula will be broadened to provide youth instruction in marketable skills at all levels, especially training programs in trades. Also, programs are included which cater to the needs of the young for organized recreational activities.

Vital communities are both indicators of, and essential tools for, development. Among the proposed programs is a village development program to involve communities in the planning and implementation of their own projects, with assistance from the State and National Governments.

J. Transportation (Land, Sea, and Air)

Capital allocations during the first plan period represent a significant share of the total planned investment. The present road network will be upgraded and expanded to open up more agricultural and residential land and improve internal marketing and distribution systems.

Investments in the sea transportation sector include dock facilities and replacement of at least one field trip ship. Adequate sea transportation systems are indispensable for the development of internal and external trade. Construction of modest, though adequate, airstrips are planned for a number of outer islands to improve access to and from the State centers and their medical and other facilities.

K. Energy

The principal problem is the excessive dependence on imported petroleum, exacerbated by the artificially low price charged for electricity.

Proposed remedies include the raising of electricity rates to cover production costs; aggressive development of indigenous renewable energy sources (especially hydro in Ponape and bio-mass in all the states); raising of import duties on electrical appliances; adoption of minimum energy standards for new construction; and developing a public education program on energy conservation and use.

L. Housing

Rapid population growth combined with the deteriorated condition of current housing stock will create a demand for at least 500 new housing units per year in the moderate $3,000-$7,000 price range. This will create at least 500 full-time jobs in the local housing industry. In fact, this sector, if appropriately promoted, could become one of the mainstays of the economy during the Plan period.

Currently, the absence of a safe mortgage market is a major impediment to the development of this sector.

To remedy this situation, and to give opportunity for local investments to individuals, a mortgage authority will be created. Public funds will be made available as seed mortgage capital to the Mortgage Authority. Complementary funds will come from the sale of medium-term (3 to 7 years) and long term mortgage notes to local private savers.

M. Water and Sanitation

Presently, more than half of the total inpatient services in hospitals exist to treat environmentally induced diseases which are preventable. There are serious water, sewage, and solid waste problems. These are exacerbated by the lack of an organized sanitation education program.

Conditions will be created to allow a growing number of FSM citizens to have access to safe drinking water, sewage and solid waste disposed systems. This will not succeed without increasing awareness among the population of the importance of adequate environmental sanitation.

Comprehensive community water system development programs are planned. As much as possible, these systems will be designed for simple, trouble-free operation, and capable of being operated and maintained by local technicians. Equipment will be capable of withstanding hard usage which means that standard designs will be slightly modified to meet local conditions. As much as possible, financial viability of the water supply utilities will be achieved by encouraging the development of financially responsible management and by establishing fees to meet costs of production. Good maintenance and careful use of facilities will be encouraged in the outlying areas by making the villagers contribute to the setting of their systems whenever possible.

Several projects and programs have been identified in the important field of sanitation. Some of them are already in the implementation stage thanks to the assistance of the U.S. Environment Protection Agency. Among the projects and programs planned are safe drinking water programs, wastewater disposal and septic tank installations, sewer extensions, solid waste disposal systems environmental sanitation awareness and other programs.

N. Government Services

The Government will provide a number of services of importance to development, including statistical services, public information services, postal services, and public safety. Organizations and staffing necessary to provide these and other services adequately, will be selectively strengthened. In addition, selective investments will be made to upgrade the facilities of Government Services where necessary.

ATTACHMENT A

SCHEDULE
FOR
REVISION OF THE NATIONAL PLAN

April 30	Assembled materials and guidelines distributed to Sectoral Personnel.
May 4-9	Training for Data Collection.
May 9	Preliminary first draft of sectoral plans, reflecting Parts A and B of Recommended Format, submitted by Sectoral Personnel to Technical Working Group.
May 11-12	National Plan Task Force meets to review "The Policy Framework".
May 10-11	Data collection begins in states.
May 23	First draft of sectoral plans, reflecting Parts A - F of Recommended Format, submitted by Sectoral Personnel to Technical Working Group.
May 30	Review of first draft of sectoral plans completed by Technical Working Group and draft returned to Sectoral Personnel for Amendment, if necessary.
June 6	Amendment of sectoral plan drafts completed by Sectoral Personnel and amended drafts returned to Technical Working Group for review.
June 7	Data collection completed and tabulation begins.
June 7	Import statistics collection begins.
June 8	Technical Working Group submits amended drafts to National Plan Task Force for approval.
June 15	National Plan Task Force completes review and approval of sectoral plans.
June 21	Import statistics collection completed.
June 28	Data tabulation completed and integration of sectoral plans into macroframework begins.
July 13	Integration of sectoral plans into macroframework completed and adjusted drafts returned for approval by Sectoral Personnel.
July 20	Adjusted drafts returned by Sectoral Personnel to Technical Working Group.

August 3	Technical Working Group completes final draft of national plan and submits it to National Plan Task Force.
August 10	Review and approval process completed by National Plan Task Force and National Plan submitted to States for review and comments.
August 24	State review process completed and comments returned to Technical Working Group.
August 31	Technical Working Group reviews State comments and makes revisions to National Plan, if necessary. National Plan Task Force approves final draft and submits it to the President for review and approval.
September 24	President approves National Plan and submits it to the FSM Congress.
November 6	FSM Congress completes review and approval of National Plan.

TABLE I: SUMMARY OF PROJECTED STATE PROJECTS, 1985-1989

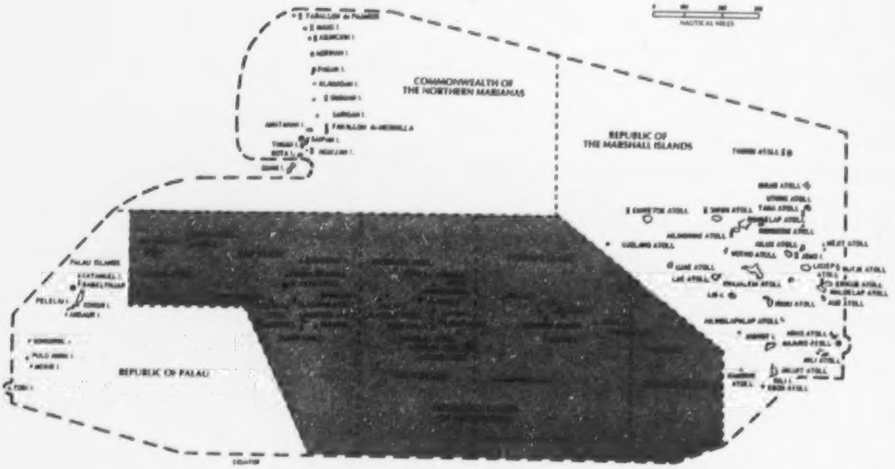
ATTACHMENT B

SECTOR	1985	1986	1987	1988	1989	TOTAL	- Per Cent
MANPOWER DEVELOPMENT (Sub-Total)	(2065)	(2345)	(2555).	(2605)	(2605)	(12,175)	7.4%
ECONOMIC SECTORS -							
Marine Resources	5357	2895	813	699	2709	12,473	
Agriculture and Forestry	2654.4	2091.8	1860.7	1734.5	1667.3	10,008.7	
Commerce and Industry	2432	3512	4466	4202	2506	17,118	
Tourism	659	325	231	185	155	1,555	
(Sub-Total)	(11,022)	(8,823.8)	(7,370.7)	(6,820.5)	(7,037)	(41,154.7)	24.9%
SOCIAL AND COMMUNITY SECTORS							
Health Services	786.5	579	384	464	424	2,637.5	
Education	2,568	809	1,065	712	619	5,845	
Youth and Community Development	591.5	511.5	601.5	571.5	434	2,710	
(Sub-Total)	(3,946)	(1,899.5)	(2,050.5)	(1,747.5)	(1,477)	(11,120.5)	6.8%
INFRASTRUCTURE SECTORS -							
Transportation - Land	4,483.9	10,354	9,700.8	5,982.7	5,491	36,012.4	
- Sea	3,047.7	1,949	1,540.5	1,049	1,148	8,734.2	
- Air	260	1,080	1,560	400	660	3,960	
(General) Land/Air/Sea	575	575	575	575	575	2,875	
Energy	1,915	1,797.2	3,306.2	3,366.2	3,570.4	13,925	
Housing	1,434	1,399	1,073	1,040	1,020	5,956	
Water and Sanitation	1,829.5	4,673	4,503	3,697.5	2,310.5	17,013.5	
(Sub-Total)	(13,548.1)	(21,827.2)	(22,248.5)	(16,080.4)	(14,774.9)	(88,476)	53.4%

SECTOR	1985	1986	1987	1988	1989	TOTAL	Percent
GOVERNMENT SECTOR							
Government Services	1,682	1,520.5	1,327	1,393	1,097	7,020.5	
Legal and Judicial Services					80	80	
(Sub-Total)	(1,682)	(1,520.5)	(1,327)	(1,393)	(1,177)	(7,100.5)	4.3%
OTHERS (Undistributed Technical Assistance Project Development & Administration Activities)						(5,516)	3.2%
(Total: 4 States)	--	--	--	--	--	(165,544.8)	100.0%

"To make one nation of many islands, we respect the diversity of our cultures. Our differences enrich us. The seas bring us together, they do not separate us . . ."

THE FEDERATED STATES OF MICRONESIA


NAUTICAL MILES
COMMONWEALTH OF THE NORTHERN MARIANAS
GUAM I.
REPUBLIC OF THE MARSHALL ISLANDS
PALAU ISLANDS
PELELIU I.
REPUBLIC OF PALAU
EQUATOR

▨ THE FEDERATED STATES OF MICRONESIA

For additional information: FSM Representative Office
706 G Street, S.E.
Washington, DC 20003
(202) 544-2640

December 1, 1983

The era of United States administration in the Federated States of Micronesia is rapidly drawing to a close, as the people of these Western Pacific Islands prepare to take control of their destiny and join the international community as a sovereign nation, in free association with the United States.

For 36 years, the more than 2,000 islands of the Federated States of Micronesia, the Republic of Palau, the Republic of the Marshall Islands, and the Commonwealth of the Northern Mariana Islands have been part of the Trust Territory of the Pacific Islands (TTPI). Guam, geographically linked to this area, is an unincorporated territory of the United States and is not part of the TTPI.

The TTPI, which was established by a 1947 trusteeship agreement between the United Nations Security Council and the United States, was not intended to last forever. Under the trusteeship agreement, the United States, as the Administering Authority, undertook an obligation to promote the economic, social, and educational advancement of the inhabitants of the TTPI, and move them towards eventual self-government or independence.

Progress toward self-government for the peoples residing within the TTPI started 18 years ago. Today, the Federated States of Micronesia is in full operation under a national constitution adopted by its people in 1978.

The signing of a Compact of Free Association between the Federated States of Micronesia and the United States on October 1, 1982, and the approval of the Compact by the people and governments of the Federated States in mid-1983, has brought the long process of self-determination for the people of the Federated States near to completion. After the Compact is approved by the United States Congress, it will provide a basis for future political, economic, and defense

NOTE: Maps in this publication are for illustration purposes only, and do not represent the boundaries of territorial seas.

President Nakayama casts his vote in U.N. observed plebiscite on Compact of Free Association with the United States.

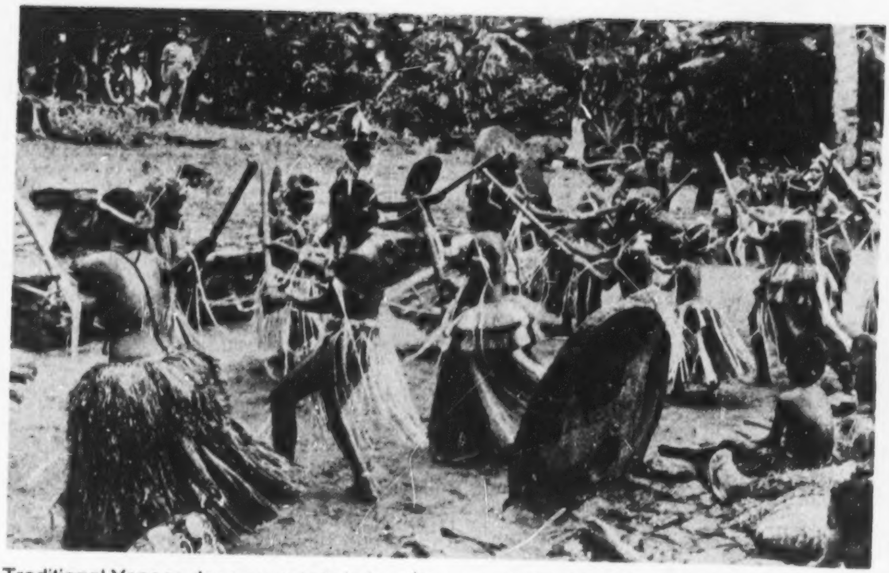
State and national leaders of the FSM meet regularly to exchange ideas at leadership conferences.

relationships between the Federated States of Micronesia and the United States and for termination of the U.N. Trusteeship Agreement.

A LOOK AT THE RECENT HISTORY OF THE FEDERATED STATES OF MICRONESIA

The establishment of the TTPI by the United Nations in 1947 continued a long history of foreign domination over the islands and people of the Federated States of Micronesia. The United States' designation as Administering Authority followed a succession of colonial administrations under the Spanish, Germans, and Japanese. However, unlike these former colonial powers, the United States, in assuming its role as trustee, agreed to "promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its people and the freely expressed wishes of the people . . . (and to) . . . promote the economic . . . social . . . and . . . educational advancement of the inhabitants."

In the earliest days, the TTPI was under the administration of the U.S. Navy, and there was virtually no internal development, either economically or politically. In 1951, administration was transferred to the U.S. Department of Interior. For some years, the area continued to languish. Limited commercial development was initiated, but advancement in all areas was hindered by a lack of basic infrastructure. This problem was recognized in a comprehensive investigation commissioned by the Kennedy Administration in 1962. Since that time, there has been progress in installing the capital infrastructure necessary for economic development — roads, harbors, airfields, power plants, communication facilities, and water and sewer systems. Similar progress has occurred in the educational and social service areas, with the installation of schools and hospitals.



Traditional Yapese dancers entertain in a stone money "bank." Yap State, FSM.

Sokehs Rock marks the entrance to the harbor at Kolonia. Ponape State, FSM.

In 1965, the first step towards self-government in the Trust Territory occurred with the formation of the Congress of Micronesia, with elected Senators and Representatives from all island groups in the TTPI. The Congress exercised broad legislative authority, subject to veto by the Administering Authority.

Shortly thereafter, a Future Political Status Commission was established by the Congress of Micronesia to study the possible alternatives. Negotiations began with the United States on the basis of a loosely defined concept of "Free Association," a status which has assumed a variety of forms in differing circumstances. In the early 1970's, the Northern Mariana Islands initiated separate negotiations with the United States, and in 1975, their people voted to become a Commonwealth of the United States. The U.S. Congress quickly approved a convenant implementing this new political status pending termination of the Trusteeship.

The history of the Federated States of Micronesia, as a political entity distinct from the TTPI, commenced on July 12, 1978. On that date, voters in the four TTPI districts that would become the states of the Federated States of Micronesia ratified a constitution drafted by a popularly elected constitutional convention. Following national elections, the present national and state governments of the Federated States of Micronesia were installed and the Constitution took effect on May 10, 1979. The national and state governments have now assumed responsibility for virtually all internal and external affairs functions formerly performed by the Administering Authority.

On October 1, 1982, after some 14 years of negotiations, the Government of the Federated States of Micronesia and the Government of the United States executed a Compact of Free Association between the two governments. An extensive public information program concerning the Compact and other options was then organized and conducted in order to give the people of the Federated States of Micronesia the information they needed to make a free and informed decision on their future political status. In a United Nations-observed plebiscite held on June 21, 1983, an overwhelming majority (79 percent) of the voters of the Federated States of Micronesia chose to approve the Compact. Subsequently, the Compact was approved by the national and state governments of the Federated States of Micronesia in accordance with the process required by the FSM Constitution.

As a sovereign nation, the Federated States of Micronesia will continue to exercise full control over its own affairs. The Compact, as an international agreement, will form a basis for future political, economic, and defense relationships between the Federated States of Micronesia and the United States. Defense and security responsibilities will be assumed by the United States, but consultation with the Federated States of Micronesia in the exercise of those responsibilities will be required. The Compact contains a substantial economic assistance package, including direct grant assistance, technical assistance, programs and services, and tax and trade benefits, in order to assist the new nation toward increased economic self-sufficiency.

THE FEDERATED STATES OF MICRONESIA AT A GLANCE

The 607 islands of the Federated States of Micronesia are spread across more than a million square miles of the Pacific Ocean, southwest of Hawaii. The total land area, however, is small, 270.8 square miles. The islands vary from high, mountainous islands of volcanic origin to low coral atolls.

The population of the Federated States of Micronesia is a heterogeneous mixture of people with different customs and traditions, bound together by a national constitution, recent history and common aspirations. The current population is estimated at 85,285. The cultural diversity is typified by the existence of eight major indigenous languages: Yapese, Ulithian, and Woleaian in Yap; Ponapean, Nukuoran, and Kapingamarangi in Ponape; Trukese in Truk; and Kosraean in Kosrae. English, however, is the official language of the governments.

GOVERNMENT IN THE FEDERATED STATES OF MICRONESIA

The Federated States of Micronesia is a democratic, constitutional federation of four states: Truk, Ponape, Yap, and Kosrae. The national capital is located on the island of Ponape.

The aspirations of the people of the Federated States of Micronesia for their own nation are framed in their national Constitution. Its preamble reads as follows:

> WE, THE PEOPLE OF MICRONESIA, exercising our inherent sovereignty, do hereby establish this Constitution of the Federated States of Micronesia.
>
> With this Constitution, we affirm our common wish to live together in peace and harmony, to preserve the heritage of the past, and to protect the promise of the future.
>
> To make one nation of many islands, we respect the diversity of our cultures. Our differences enrich us. The seas bring us together, they do not separate us. Our islands sustain us, our island nation enlarges us and makes us stronger.
>
> Our ancestors, who made their homes on these islands, displaced no other people. We, who remain, wish no other home than this. Having known war, we hope for peace. Having been divided, we wish unity. Having been ruled, we seek freedom.
>
> Micronesia began in the days when man explored seas in rafts and canoes. The Micronesian nation is born in an age when men voyage among stars; our world itself is an island. We extend to all nations what we seek from

> each: peace, friendship, cooperation, and love in our common humanity. With this Constitution we, who have been the wards of other nations, become the proud guardian of our own islands, now and forever.

Many similarities exist between the democratic systems of government in the Federated States of Micronesia and the United States. There are three levels of government in the Federated States of Micronesia — national, state, and municipal. The national government is divided into executive, legislative and judicial branches, and is responsible for foreign affairs, regulation of foreign and interstate commerce, regulation of air and sea navigation, and other matters beyond the control of a single state.

The executive branch of the national government is headed by a President and Vice President, who are elected by the Congress of the Federated States of Micronesia from among its members, and serve four-year terms. Upon election, the President and Vice President automatically vacate their seats in the Congress and replacements are chosen in a special election. The President and Vice President may not be from the same state. Tosiwo Nakayama, of Truk, is serving his second term as President, and Bailey Olter, of Ponape, is Vice President.

The Congress of the Federated States of Micronesia is a unicameral body with 14 members called "Senators". Bethwel Henry, of Ponape, is serving his second term as Speaker of the Congress. Four Senators are elected at-large based on state equality, and ten Senators are elected on the basis of a population apportionment. The four at-large Senators serve four-year terms, and the ramaining Senators serve two-year terms.

The national judiciary consists of a Supreme Court with justices appointed by the President with the advice and consent of the Congress. Justices serve for life.

Bethwel Henry, Speaker of the FSM Congress (R) presents President Tosiwo Nakayama with the legislators' unanimous resolution approving the Compact.

President Nakayama arrives in Kosrae state, FSM, for official visit.

Popularly elected governments are in place in each of the four states of the Federated States of Micronesia.

Each of the four state governments has three branches — executive, legislative and judicial. The current state Governors are Erhart Aten of Truk, Resio Moses of Ponape, John A. Mangefel of Yap, and Yosiwo George of Kosrae.

State legislatures vary in size. The current state legislature Speakers are Kisande Sos of Truk, Salter Etse of Ponape, Joseph Ayin of Yap, and Gaius Nedlic of Kosrae.

In view of the deep desire of the people of the Federated States of Micronesia to preserve traditional values and customs, and, at the same time, move forward with modernization and development, the system of government in the Federated States of Micronesia recognizes a role for traditional leaders and customs. For example, in Yap, the State Constitution provides for two councils of traditional leaders. The Council of Pilung, Chiefs from Yap Island proper, and the Council of Tamol, Chiefs from the outer islands, are far from mere ornaments. They play an important role in the government and in the selection of candidates for political office. The Councils also have the right to review and veto any legislation affecting traditions and custom. Similarly, the Kosrae Constitution recognizes traditional authority and the draft Truk State Constitution provides for an advisory council of traditional leaders. In all likelihood, the Ponape State Constitution will preserve a role for traditional leadership.

ECONOMIC DEVELOPMENT

After years of faltering progress under the Trusteeship Administration, economic development is a top priority for the governments and people of the Federated States of Micronesia. Economic development plans are being completed at the national and state levels, in order to guide the implementation of an effective program to stimulate the private sector economy.

Today, the economy of the Federated States of Micronesia is heavily dependent on financial assistance from the United States. Japan, the United Nations and various regional organizations also provide limited financial and technical assistance to the government. Other growing sources of revenue include locally levied taxes and the sale of fishing rights. Exports are generally limited to copra, handicrafts, trochus shell and some marine products. Unemployment is high, with only about 30 percent of the work force employed in the money economy and many persons relying on subsistence farming for their livelihoods. Government is the major employer. In 1982, there were approximately 11,400 jobs available, with 6,500 jobs in the public sector and 4,900 jobs in the private sector. It is estimated that 20,000 new, permanent jobs will be needed in the next 15 years.

The long-term goal of the development program is to achieve increased economic self-sufficiency. Efforts are planned to reduce the present over-reliance on imports through increased production and consumption of local products, to increase exports, to attract foreign investment, to develop the local skilled labor force necessary to meet the FSM's manpower needs, and to create more jobs for a growing population.

There are excellent opportunities for economic development and investment in the FSM, and the future prospects are bright for increased economic

Traditional handicrafts offer good possibilities for FSM export trade development.

Fisheries, the FSM's most basic resource, are being developed with the combined expertise of FSM citizens and expatriates.

self-sufficiency. The fisheries, agricultural, and maricultural segments of the economy have been targeted for early development, and there is potential for service and light manufacturing industries throughout the country.

The tourism potential of the FSM has not been fully exploited. With the spectacular beauty of the islands, their recreational attractions and their unique history and culture, there are obvious opportunities for development of this industry. In 1981, more than 16,000 persons visited the FSM, generating an estimated $1.7 million in revenue. This is particularly significant since hotel and restaurant facilities are somewhat limited, with only 240 hotel rooms available.

Funds received under the Compact of Free Association will be vital to the economy's growth and development. A minimum of 40 percent of the basic grant funds under the Compact are to be used for economic development and capital infrastructure activities.

Until recently, the capital infrastructure necessary for economic development has been inadequate. There has been considerable progress, particularly in the state centers, with a capital improvement program financed by the U.S. Government to construct roads, docks, power plants, water and sewer systems, and airfields. Further grants from the United States for these purposes are anticipated prior to termination of the Trusteeship, and a large portion of the Compact funding will be used in future phases of this work.

In 1983, satellite earth stations operated by the U.S. Communications Satellite Corporation (COMSAT) were opened in each of the four states. Plans are now underway to improve and expand terrestial communications systems.

International and inter-island transportation improvements are also a major element of the economic development program. The States of Truk, Yap, and Ponape are currently receiving air service by Air Micronesia, Inc. from Guam and Honolulu. The State of Kosrae recently completed a new airport facility. Limited service is also provided by Air Nauru, and by Pacific Missionary Aviation for domestic travel. The Federated States of Micronesia is served by several shipping companies operating from Guam and the U.S. West Coast, and inter-island passenger and cargo service is provided by small, government-operated field trip ships.

EDUCATION

The Federated States of Micronesia has an American style educational system, with eight years of primary school required, four more years of secondary or high school education optional, and post-secondary educational opportunities provided through the College of Micronesia system and institutions outside of the FSM. All four states of the Federated States of Micronesia have at least one public high school. Several private primary and secondary schools also exist, including Xavier High School in Truk, the Ponape Agriculture and Trade School (PATS) and the Seventh Day Adventist School in Ponape.

The College of Micronesia system, established in 1977, is the only post-secondary educational institution in Micronesia. It will play a key role in the future economic and social development of the FSM, as the FSM attempts to address its manpower training needs. The College of Micronesia will have a Fall 1983 enrollment in excess of 1,300. The College of Micronesia is presently operated as a unified post-secondary education system serving the needs of the citizens of Palau, the Marshall Islands, and the Federated States of Micronesia. An effort is being made to find the financial resources necessary to meet the future operational and capital requirements of the College.

In addition to the College of Micronesia, the Federated States of Micronesia relies heavily on post-secondary educational institutions outside of the FSM, particularly in Guam, Hawaii and the continental United States.

HEALTH

Health services in the Federated States of Micronesia are provided through central hospitals and dispensaries in the municipalities and on the outer islands. The dispensaries provide basic services to a large segment of the population. Staffing the dispensaries and hospitals are expatriate physicians and local medical officers, paramedicals and nurses' aides. The dispensaries and the central hospitals continue to suffer from a lack of funds to hire trained medical personnel, to purchase necessary medical equipment and supplies, and to upgrade and maintain the health facilities. Efforts are being made to address these problems, particularly the health manpower needs, as well as the root causes of many health problems — inadequate health education and water and sewer facilities.

PARTICIPATION IN INTERNATIONAL ORGANIZATIONS

One of the early policies adopted by the new government of the Federated States of Micronesia was to join, to the extent practicable, in the work of international and, particularly, Pacific regional organizations. This activity has already reaped enormous benefits for the FSM, and has gone far in establishing its visibility and acceptability as a responsible member of the Pacific community. At present, the FSM participates in such organizations as the South Pacific Commission, the South Pacific Forum, the Forum Fisheries Agency, the South Pacific Bureau for Economic Cooperation, and the Asian-Pacific

Parliamentary Union, to name a few. The FSM's participation in organizations of these types will naturally increase once the Compact becomes effective and its free association relationship with the United States is firmly established. The United States has undertaken in the Compact to support the FSM's goals in this regard.

International organizations, and countries other than the U.S., are also participating in the development of the FSM. The International Monetary fund is assisting in the development of monetary, fiscal and budgetary systems. Technical help is also coming from the United Nations Development program. Modest amounts of economic aid are being provided by Japan and Australia, and New Zealand has shown interest in providing development related training.

THE YEARS AHEAD — A NEW BEGINNING

The people of the FSM feel a keen sense of anticipation as the long-awaited termination of the U.N. Trusteeship draws near. Clearly, the new nation is ready to take the reins of its future. The new beginning will not terminate the partnership between the United States and the FSM as they continue to foster common ideals in the FSM and in the Pacific region. President Nakayama recently observed:

> "We, Micronesians and Americans, have come a long way together. The end of the Trusteeship will not mean the end of the friendship that has grown over the years. Instead, it will become a friendship between nations, and develop in new ways."

ASIAN-
PARLIAMENTA
32ND COUN
AUGUST 2

President Nakayama welcomes the Asian-Pacific Parliamentarians' Union (APPU) to its first meeting in the Federated States of Micronesia.

KOSRAE STATE

Capital:	Lelu, Kosrae
Governor:	Hon. Yosiwo George Kosrae State Government Lelu, Kosrae, FSM 96944
Land area:	42.3 square miles
Population:	6,068
Annual rainfall:	184-250 inches
Average temp:	80°F

• KOSRAE
KOSRAE

Kosrae is the easternmost high island in the Federated States of Micronesia, and is largely mountainous with well-watered valleys between two major peaks. The interior is densely forested, and only the coastal areas are inhabited. Kosrae has excellent beaches.

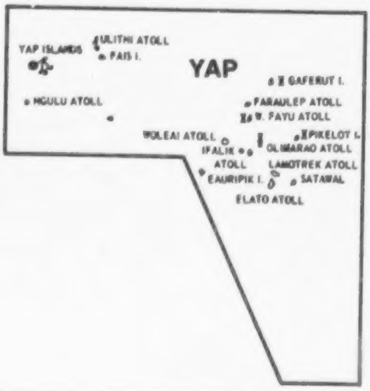
The main villages are Tafunsak, Malem, and Utwe. Most of the population lives on Lelu Island (only 3,400 by 1,500 feet, just off the North-East coast of the main island of Kosrae).

Eighty percent of the 740 people in the money economy work for the government, with most of the others in retail trade. Much of the population relies on subsistence farming and fishing for their livelihood.

Efforts are underway to create an export market for citrus and other agricultural products.

YAP STATE

Capital:	Colonia, Yap
Governor:	Hon. John A. Mangefel Yap State Government Colonia, Yap, FSM 96943
Land area:	45.9 square miles
Population:	10,264
Annual rainfall:	110 inches
Average temp:	80°F

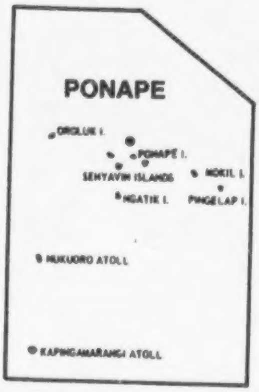

YAP ISLANDS
ULITHI ATOLL
FAIS I.
YAP
GAFERUT I.
NGULU ATOLL
FARAULEP ATOLL
W. FAYU ATOLL
WOLEAI ATOLL
PIKELOT I.
IFALIK ATOLL
OLIMARAO ATOLL
LAMOTREK ATOLL
EAURIPIK I.
SATAWAL
ELATO ATOLL

Yap State, the westernmost in the FSM, consists of 15 atolls and island groups. The main island group, Yap proper, consists of four large high islands and seven smaller islands. The state capital, Colonia, is located here, and this group accounts for about 39 square miles of the state's total land area. The remaining islands are low coral atolls, the largest of which is Ulithi, about 210 miles from Yap. Satawal, in the easternmost part of the state, is 640 miles from Yap.

Almost 65 percent of Yap state's population lives on Yap proper. There are about 1,300 workers in the money economy. The government employs 70 percent of the wage earners. Nearly 56 percent of the work force is in the village subsistence economy. Copra production, food gathering, fishing and handicrafts are important parts of the state's economy. Yap is considered the most traditional society in the Federated States of Micronesia.

PONAPE STATE

Capital:	Kolonia, Ponape
Governor:	Hon. Resio Moses Ponape State Government Kolonia, Ponape, FSM 96941
Land area:	133.4 square miles
Population:	25,978
Annual rainfall:	180-330 inches
Average temp:	80°F



Ponape State consists of the high, lush island of Ponape, and tiny islands and atolls that together add only four square miles of land area.

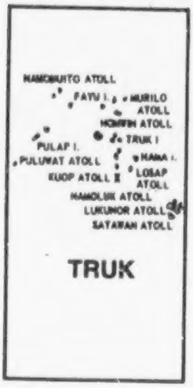
Annual rainfall on Ponape proper is the greatest in the Pacific, and it feeds numerous streams and waterfalls. The interior receives as much as 330 inches a year.

The state government is the largest employer with 1,900 salaried workers. There are 3,600 workers in the money economy.

After government employment, agriculture is the main source of income. Copra and peppercorns are the major cash crops. Subsistence farming is widespread, as is fishing. Handicraft manufacture is a growing, small-scale cottage industry with export potential. Tourism is a growing segment of the economy, with one of the major attractions being the Nan Madol Ruins, a city of islets, channels, and basalt columns built more than seven hundred years ago by the ancient rulers of Ponape.

TRUK STATE

Capital:	Moen, Truk
Governor:	Hon. Erhart Aten Truk State Government Moen, Truk, FSM 96942
Land Area:	49.2 square miles
Population:	42,975
Annual rainfall:	120 inches
Average temp:	80°F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SATAWAN ATOLL
TRUK

Truk State has more than 100 islands and atolls spread over 180,000 square miles. Except in the Truk lagoon, all islands are coral atolls or single coral islands. Truk lagoon, 822 square miles, is one of the world's largest.

Truk is the most populous of the FSM states. About 25,000 people live on the Truk lagoon's six largest islands. The climate is tropical, with little temperature change. There are pronounced rainy and dry seasons caused by shifts in the wind systems. Truk lies on the eastern edge of the monsoon area, but typhoons are infrequent.

Truk's private sector economy is based principally on copra production; fishing and subsistence farming and secondary industries. Tourism is a small, but developing, segment of the economy. Truk lagoon offers spectacular diving, boating, fishing and other recreational activities. The hundreds of Japanese naval vessels sunk during World War II are a major attraction.

The government is the leading employer in the money economy, with about 3,800 workers. There are 2,100 workers in the private sector, most in retail trade and light construction.